

# **EXHIBIT C**

Teleconference

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

L.G. PHILLIPS LCD	)	
CO., LTD.,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	04-343-JJF
v.	)	
	)	
TATUNG COMPANY;	)	
TATUNG COMPANY OF	)	
AMERICA, INC.; and	)	
VIEWSONIC	)	
CORPORATION,	)	
	)	
Defendants.	)	

A teleconference was taken pursuant to notice before Ellen Corbett Hannum, Registered Merit Reporter, in the law offices of Blank Rome, 1201 N. Market Street, Suite 800, Wilmington, Delaware, on Wednesday, May 23, 2007, beginning at approximately 2:30 p.m., there being present:

BEFORE: SPECIAL MASTER VINCENT L. POPPITI  
APPEARANCES:

RICHARD D. KIRK, ESQ.  
The Bayard Firm  
Wilmington, Delaware 19801  
and

CASS W. CHRISTENSON, ESQ.  
REL S. AMBROZY, ESQ.  
CORMAC T. CONNOR, ESQ.  
McKenna Long & Aldridge LLP  
Washington, D.C. 20006  
For the Plaintiff  
CORBETT & WILCOX

Registered Professional Reporters  
The Parcels Building - 230 N. Market Street  
Wilmington, DE 19801  
(302) 571-0510

[www.corbettreporting.com](http://www.corbettreporting.com)

Corbett & Wilcox is not affiliated with Wilcox & Fetzer,  
Court Reporters

Teleconference

Page 2

1 APPEARANCES (CONTINUED):

2 JAMES A.L. TWEEDIE, ESQ.  
3 Richards, Layton & Finger  
4 Wilmington, Delaware 19801  
5 and  
6 VALERIE W. HO, ESQ.  
7 FRANK E. MERIDETH, JR., ESQ.  
8 MARK H. KRIETZMAN, ESQ.  
9 Greenberg Traurig LLP  
10 Santa Monica, California 90404  
11 For the Defendants Tatung Co. and  
12 Tatung Company of America, Inc.

13 JAMES D. HEISMAN, ESQ.  
14 SCOTT MILLER, ESQ.  
15 Connolly Bove Lodge & Hutz LLP  
16 Wilmington, Delaware 19801  
17 For the Defendant ViewSonic  
18 Corporation

19 - - - - -

20 SPECIAL MASTER POPPITI: Let's do roll  
21 call.

22 MR. KIRK: This is Richard Kirk from The  
23 Bayard Firm. And with me on the line from McKenna Long &  
24 Aldridge in Washington are Cass Christenson, Rel Ambrozy,  
and Cormac Connor.

25 SPECIAL MASTER POPPITI: Thank you.

26 MR. HEISMAN: Jim Heisman from Connolly  
27 Bove on behalf of ViewSonic, with me on the phone, also  
28 from Connolly Bove, is Scott Miller.

29 SPECIAL MASTER POPPITI: Thank you,  
30 Mr. Heisman.

Teleconference

Page 3

1 MR. TWEEDIE: Jameson Tweedie on behalf  
2 of the Tatung defendants, with me are Frank Merideth and  
3 Valerie Ho of Greenberg Traurig, and, I think, Mark  
4 Krietzman also; is that correct?

5 MS. HO: That's correct.

6 SPECIAL MASTER POPPITI: Yes. Thank  
7 you, Mr. Tweedie.

8 Let's do a couple of things. First of  
9 all, I have, I am mindful of the status letter that  
10 Mr. Kirk sent to me on May 10th of 2007. And my review  
11 of that suggests that that is in fact just status, that  
12 there is nothing that we will be dealing with today in  
13 relation to that letter. Is that correct?

14 MR. KIRK: Cass, do you want to speak  
15 for us.

16 MR. CHRISTENSON: Your Honor, is that  
17 the letter that references the status of certain  
18 third-party discovery?

19 SPECIAL MASTER POPPITI: It is. It's a  
20 letter that references the status of subpoenas, Hewlett  
21 Packard is mentioned, WalMart stores, Sam's Club and  
22 there may be a few other issues that are raised in the  
23 letter, but it looks like it deals with third-party  
24 issues.

Teleconference

Page 4

1 MR. CHRISTENSON: Your Honor, our intent  
2 in submitting that was merely to update you and to let  
3 you know that there were a few third parties that were  
4 continuing to produce discovery. And with respect to  
5 those specific third parties, as I understand it, there  
6 is not a dispute currently that would need to be  
7 addressed by you, we just wanted to give you an update.

8 SPECIAL MASTER POPPITI: Okay. That's  
9 great. Thank you.

10 MR. CHRISTENSON: You are welcome.

11 SPECIAL MASTER POPPITI: Then with that,  
12 let me first turn to something that came in only recently  
13 and that would have been yesterday, correspondence from  
14 Ann Gaza advising me of the status of Tatung's quest to  
15 inspect Tatung products or alleged Tatung products in  
16 LPL's possession. I reviewed that. I know that there  
17 has not been a response to that. And I am wondering  
18 whether we can't deal with that today or whether LPL  
19 intends to file a formal response and we will have to  
20 deal with it at another time.

21 Are you mindful of the letter?

22 MR. CONNOR: Yes, we are. We would like  
23 the opportunity to respond to that letter, if we could.  
24 And it's something that we could do in fairly short order

Teleconference

Page 5

1 but, again, as I am sure you also received it just  
2 yesterday.

3 SPECIAL MASTER POPPITI: I did. It's  
4 short and to the point.

5 MR. CONNOR: Yes.

6 SPECIAL MASTER POPPITI: Would there be  
7 any benefit to simply asking the parties to discuss it  
8 for the next ten minutes or so?

9 MS. HO: I believe so, Your Honor. This  
10 is Valerie Ho. I don't see why this issue would need to  
11 be put off for another day. It's pretty simple, and I  
12 think if we had a few minutes to discuss it with the  
13 counsel for LPL that we may come to some kind of  
14 agreement.

15 SPECIAL MASTER POPPITI: I would prefer  
16 that we do that, only because I certainly know that your  
17 time will be committed between now and the middle of next  
18 week. And even beyond that, it's going to be important  
19 to be focused on all the issues remaining but I think  
20 this one -- I would hope you could come to some  
21 resolution. So why don't we do that now. I will simply  
22 put you all on hold and rejoin you all at -- because I  
23 think I can do that, right, Mr. Kirk?

24 MR. KIRK: Yes, Your Honor. I have one

Teleconference

Page 6

1 issue, Your Honor.

2 SPECIAL MASTER POPPITI: Yes.

3 MR. KIRK: If I might.

4 SPECIAL MASTER POPPITI: Please.

5 MR. KIRK: I had thought LPL wanted to  
6 raise it. We thought it was a simple, discrete and non-  
7 substantive regarding claim construction, since the  
8 hearing is now less than a week away, we felt it  
9 important to raise today.

10 SPECIAL MASTER POPPITI: Okay.

11 MR. KIRK: The defendant's answering  
12 briefs have correctly noted a problem with a figure,  
13 Figure 10 from the patent that has appeared in some of --  
14 in all of LPL's briefs.

15 SPECIAL MASTER POPPITI: I'm aware of  
16 the comments and the asserted problem.

17 MR. KIRK: And if I could just offer a  
18 bit of explanation, we want to correct that. Figure 10  
19 is from the patent, rather than just physically  
20 duplicating or reproducing that, we actually used an  
21 animator, a graphic artist, and he did just more than  
22 Figure 10, but he did a lot of animations for us. And in  
23 recreating Figure 10 the graphic artist misjudged one of  
24 the dimensions in Figure 10 and we didn't catch that

Teleconference

Page 7

1 error until we read defendant's brief.

2 Now, remember, we had filed an opening  
3 brief and a supplemental opening brief and then we filed  
4 an answering brief at the same time that the defendants  
5 filed their answering brief.

6 SPECIAL MASTER POPPITI: Yes.

7 MR. KIRK: So that was the first time we  
8 noticed that ourselves, when we had already filed three  
9 briefs with that incorrect figure in it. We would like  
10 to correct that. And our question really was just  
11 guidance whether it would be more useful to the Court to  
12 have entire new sets of briefs or corrected pages,  
13 corrected only by changing that figure. There were, I  
14 think, seven instances of that figure in the opening  
15 brief and then one each in the supplemental opening brief  
16 and the answering brief. And I didn't know whether Your  
17 Honor had already begun to mark the briefs and might not  
18 find it convenient to have new sets of briefs or simply  
19 substitute pages.

20 SPECIAL MASTER POPPITI: Any comment,  
21 please, with respect to the request?

22 MR. MERIDETH: Yes, this is Frank  
23 Merideth, Your Honor. I believe the problem is more  
24 complex than merely replacing the figure itself because



## Teleconference

Page 8

1 if the figure were corrected, the references in the text  
2 of the brief and the conclusions drawn based upon the  
3 altered Figure 10 would also have to be changed. In  
4 other words, what is referred to as green would be red or  
5 vice versa and the text would not correspond to the  
6 correct Figure 10 and the conclusions that are drawn,  
7 based upon the altered Figure 10, in my view, would have  
8 to be reconsidered.

9 MR. MILLER: Your Honor, this is Scott  
10 Miller.

11 My view on this is this is an issue that  
12 should be raised at the claim construction hearing with a  
13 slide or whatever LPL wanted to do with the corrected  
14 figure. It's a matter that was the substance of the  
15 briefing and really doesn't belong outside of the Markman  
16 Hearing procedure, it didn't seem to me.

17 Defendants used pages in their  
18 responding brief that they could have used for other  
19 things, if this was merely a draftsman's error. And I  
20 think we are all better served just by having the  
21 explanation presented at the hearing and responding to it  
22 at that time.

23 MR. AMBROZY: Rel Ambrozy, if I may.

24 On Mr. Merideth's comments, Mr. Merideth

## Teleconference

Page 9

1 has not seen the corrected figures, so I think he is  
2 unaware of what actually would be corrected, but all it  
3 is is the lower hinge arm. None of what he described,  
4 the red color or the green color or the description that  
5 goes along with that, changes. The only piece that  
6 changes is the lower portion of the hinge arm which is  
7 not anywhere in the discussion or discussed in the text  
8 of the brief. So none of the colors change, none of the  
9 discussion changes, none of the conclusions change.

10 And in regards to Mr. Miller's comment,  
11 we believe that it's more appropriate for Your Honor and  
12 for the parties to consider the correct versions, rather  
13 than spend time and waste the Court's time on -- I think  
14 the phrase was secretly altered figures -- which is  
15 totally inappropriate and it's an incorrect statement.

16 SPECIAL MASTER POPPITI: Well, let me  
17 remind myself and everyone else as well that there was --  
18 and I don't have the specifics in front of me because  
19 the, I'm not sitting with the Markman briefing. And yes,  
20 they have been rather marked up and chewed on, if you  
21 will, so I would prefer that if the document itself is  
22 going to be altered at all, it only be that part of the  
23 documents that has the figure in them. Number 1.

24 Number 2, I believe it was last week,

Teleconference

Page 10

1 shortly after the filing of the final briefs, that  
2 ViewSonic did substitute the entire brief for purposes of  
3 correcting one of the figures. And, again, without my  
4 being in front of the briefing, I can't be more specific  
5 than that.

6 It seems to me to have the document  
7 corrected now, where there is going to be no change to  
8 the substance of the document and/or no change to the  
9 conclusion, that changing it now make sense so we don't  
10 have to spend time during the course of the Markman to  
11 talk about the change. It may be important to talk about  
12 it, but substantively I think it's an easy thing to do.  
13 I'm going to permit substitution of pages.

14 MR. KIRK: Thank you, Your Honor. We  
15 will take care of that very shortly.

16 SPECIAL MASTER POPPITI: All right.  
17 Thank you.

18 MR. MILLER: Just so the record is clear  
19 I believe it was Tatung not ViewSonic who substituted.

20 SPECIAL MASTER POPPITI: Thank you for  
21 doing that. I apologize for not being more -- I knew  
22 there was a substitution and I don't have it readily in  
23 mind, but I appreciate your correcting the record.

24 All right. Let's do this. I do want

Teleconference

Page 11

1 you to take a look at the May 22nd, if we are saying it's  
2 going to take no longer than ten minutes, why don't we  
3 all get back on the line at a little -- it's a little bit  
4 beyond a quarter to 3:00, so let's look at a little bit  
5 beyond 5 minutes to 3:00.

6 MR. MERIDETH: If I could just ask a  
7 couple of questions in terms of how we are going to ham  
8 this page substitution.

9 SPECIAL MASTER POPPITI: Yes.

10 MR. MERIDETH: The figure is going to be  
11 changed and how soon would we get those pages.

12 MR. KIRK: I could tend you the pages  
13 this afternoon.

14 MR. MERIDETH: Would we have an  
15 opportunity to comment on the change?

16 MR. KIRK: I don't know the need to  
17 comment on the change because the change is making the  
18 correction that you all pointed out.

19 MR. MERIDETH: Well, I don't know  
20 because from the description that was given, if you are  
21 only going to address the lower part of the hinge arm,  
22 that's not a problem that we see with respect to Figure  
23 10, or the altered Figure 10. So, I mean, I can't say  
24 until I see what it is that you are going to do whether

Teleconference

Page 12

1 we would have something to say about it. And I suppose  
2 it would be better for us to say it and have everybody  
3 understand what our position is before we start the  
4 hearing.

5 SPECIAL MASTER POPPITI: I would agree  
6 with that. So what are you proposing?

7 MR. MERIDETH: When we get the drawing,  
8 if we get the page, the pages, then maybe by Friday  
9 morning we could file any commentary that we have, if  
10 there is any.

11 SPECIAL MASTER POPPITI: Any comments,  
12 please?

13 MR. KIRK: Your Honor, we are not  
14 opposed to giving him the opportunity to do that, but I  
15 don't believe that it would require much additional  
16 briefing if we could get a one or one and a half page  
17 limit, if necessary.

18 MR. MERIDETH: I don't know until I see  
19 -- I would be happy to discuss it with you once we have  
20 an opportunity.

21 SPECIAL MASTER POPPITI: I would prefer  
22 you do it that way, and if there is a dispute you know  
23 how to get in touch with.

24 MR. KIRK: Yes, Your Honor.

Teleconference

Page 13

1 MR. CHRISTENSON: So, Frank, we can talk  
2 tomorrow.

3 MR. MERIDETH: Yes.

4 SPECIAL MASTER POPPITI: Let's take the  
5 time to look at the May 22nd, and we will do 3 o'clock  
6 now.

7 (Discussion off the record.)

8 SPECIAL MASTER POPPITI: Are we ready?

9 MR. CHRISTENSON: We are ready.

10 SPECIAL MASTER POPPITI: Any resolution  
11 on the May 22nd.

12 MR. CONNOR: It does not appear so. If  
13 you prefer, I can state LPL's position on this issue.

14 SPECIAL MASTER POPPITI: Yes. I would  
15 prefer we deal with it now if you agree to do it in that  
16 fashion.

17 MR. CONNOR: Part of our discussion  
18 offline was the need for this inspection, the issue  
19 being, as pointed out in their submission to Your Honor,  
20 that they do not believe that the serial number that we  
21 identified as the sample that we have in our office is in  
22 fact a Tatung manufactured product.

23 SPECIAL MASTER POPPITI: Right.

24 MR. CONNOR: And if that's the case,

## Teleconference

Page 14

1 then there are several reasons for us to wonder why an  
2 inspection is necessary. First of all, if -- I ask if  
3 Tatung is suggesting that a different OEM other than  
4 Tatung makes the same product number for HP would perhaps  
5 manufacture it differently or if there are technical  
6 specifications that would suggest that the product is  
7 manufactured differently or if there is some, even some  
8 piece of the product, they were saying that the  
9 photographs we have sent already don't allow them to  
10 conclusively determine whether or not this product is a  
11 Tatung product, I asked if we could provide pictures of  
12 those parts. And Ms. Ho is not able to identify and  
13 insisted on inspection.

14 Furthermore, as we discussed during the  
15 prior hearing, and this pertinent point is at page 24 and  
16 page 27 of the April 17th hearing.

17 SPECIAL MASTER POPPITI: Wait just a  
18 second.

19 MR. CONNOR: Your Honor ordered Tatung  
20 to determine whether or not product was available either  
21 in its own inventory or on the open market. And I can  
22 represent to Your Honor that when I got the copy of the  
23 letter last night, I look, did a quick Google search for  
24 that product number and was able to find two of them for

Teleconference

Page 15

1 sale at a Web site called PriceGrabber.com. And so our  
2 question is if Tatung is saying that the product we have,  
3 first of all, is not a Tatung product, then maybe we need  
4 to go out and get another one or maybe they need to get  
5 another one or something like that and explain how it's  
6 different and how the product that we have is not  
7 representative of a product manufactured by Tatung.

8 Basically, we just don't find that  
9 inspection is going to be a useful expenditure of  
10 everyone's time.

11 MS. HO: This is Valerie Ho.

12 May I respond?

13 SPECIAL MASTER POPPITI: Please.

14 MS. HO: Your Honor, as you will,  
15 recall, at the last hearing when Tatung's motion for  
16 inspection came up, Your Honor did rule that LPL should  
17 provide the serial numbers of the alleged Tatung product  
18 in LPL's possession so that Tatung could compare those  
19 serial numbers with their own records to determine if  
20 those products are in fact Tatung products.

21 SPECIAL MASTER POPPITI: Right.

22 MS. HO: We have done and that and there  
23 is one product that, based on the serial number alone, it  
24 does not appear to be a Tatung product, at least from the



## Teleconference

Page 16

1 records that we have.

2                   The other thing we have done is we have  
3 tried to go out and see if this product is available in  
4 the open market. And we were told by HP that this  
5 product has been discontinued and, therefore, we were not  
6 able to obtain it from HP.

7                   Now, having said that, I do not believe  
8 that even if we were to go out and purchase the same  
9 model number, that is the HPFP7317 that that would be  
10 helpful because, as Your Honor will recall, HP sources  
11 the same product, that is, the same model number from  
12 different OEMs potentially. So even if we were to get  
13 this product from the open market, it may not be the same  
14 product that is in LPL's possession.

15                   And so the only product that we would  
16 need to inspect is the one that LPL has, because that's  
17 the one that it is accusing of infringing the patents in  
18 suit. As for what we could potentially learn from an  
19 inspection, it's hard to say because we don't have the  
20 product in front of us. But I can tell Your Honor that  
21 from looking at the photographs that were provided by LPL  
22 it is very unclear whether that product is a product that  
23 was made by Tatung.

24                   For example, there is what we call a

## Teleconference

Page 17

1 tray that we use in a lot of our monitor products, and  
2 that's a tray that, in which the LCD module is placed.  
3 And sometimes we call it a tray, sometimes we call it a  
4 meadow tray, sometimes we call it a main frame. The main  
5 frames that we use generally tend to be the same, so  
6 that's one thing that we would look at to determine if  
7 perhaps it is in fact a Tatung product or not.

8 From the photographs it is impossible to  
9 tell, simply put. We really do need to see the actual  
10 product itself.

11 In addition to that, there may be other  
12 markings on the product that would tell us one way or the  
13 other as to whether it is a Tatung product. That is just  
14 not a determination that I can make based on the  
15 photographs that LPL has provided at this point.

16 SPECIAL MASTER POPPITI: Let me ask a  
17 question, though, Ms. Ho.

18 With the identification of two products  
19 that are available that carry the same serial number, how  
20 long do you expect it would take to secure one or both of  
21 those products, at what expense, and how long would it  
22 take to conduct whatever inspection work you would need  
23 to do to make either a determination that it is, that  
24 they are Tatung products, that they aren't Tatung

Teleconference

Page 18

1 products or that you can't tell because of the very  
2 issues that you have just identified? How long would  
3 that process take?

4 MS. HO: The inspection, I believe,  
5 would take half an hour to 45 minutes.

6 SPECIAL MASTER POPPITI: Okay.

7 MS. HO: And the reason for that is  
8 because we would have to disassemble the product and  
9 inspect it and perhaps photograph it and then reassemble  
10 it. And that takes some time.

11 SPECIAL MASTER POPPITI: Okay.

12 MS. HO: As for obtaining the product, I  
13 was not aware that this product is available on a  
14 different Web site. Obviously, it wouldn't take very  
15 long to purchase it, but I do not believe that the two  
16 products that Mr. Connor referenced would have the same  
17 serial number as the one that LPL has because, as I  
18 understand it, all of these products would have different  
19 serial numbers. So they would have the same model  
20 number, but they will all have different serial numbers.

21 SPECIAL MASTER POPPITI: Say what you  
22 just said again. They would all have the same model  
23 number but different serial numbers?

24 MS. HO: Right, Your Honor.

Teleconference

Page 19

1 SPECIAL MASTER POPPITI: And what  
2 implication does that have?

3 MS. HO: Well, the difference is that HP  
4 would have a product that would have a certain model  
5 number, for example, the HPFP7317, and that's just the HP  
6 model number. And HP may source that product from  
7 different OEMs, including Tatung and perhaps L.G.  
8 Phillips. And each of the products that are made by the  
9 different OEMs would have a different serial number, even  
10 though the products share the same model number.

11 SPECIAL MASTER POPPITI: And you won't  
12 know that until you see it; correct?

13 MS. HO: Correct.

14 MR. CONNOR: This is Cormac Connor.

15 I believe what Tatung's concern is that  
16 they don't believe that the product that LPL has in its  
17 possession was manufactured by Tatung.

18 SPECIAL MASTER POPPITI: I understand  
19 that.

20 MR. CONNOR: And to point out, first of  
21 all, that the only reason -- the first that we learned of  
22 the FP7317 was in a March 1st letter from Tatung's  
23 counsel that linked a Tatung product -- actually two  
24 Tatung product numbers, to a corresponding HP product

Teleconference

Page 20

1 number. And it was only then that we were able to go out  
2 and that purchase that product for ourselves.

3 Now, that said, what we have done since  
4 then is to inspect it and made that product as part of  
5 our list of accused products. And the follow-on question  
6 is whether Tatung has done the investigation to determine  
7 whether it has its own product numbers. And I will read  
8 them into the record just so we are clear. These are  
9 coming from letters that we received, first, from  
10 Tatung's counsel on March 1st and then a follow-up letter  
11 on March 7th, but the product number identification is  
12 the same. Again, this is the corresponding, the HP  
13 product number FP7317 to Tatung's product numbers -- the  
14 following two products. The first is: L17EMBQ-U08 and  
15 the second product number was L17KMBQ-U08.

16 SPECIAL MASTER POPPITI: Do those  
17 numbers again, please, for the record.

18 MR. CONNOR: The first one was  
19 L17EMBQ-U08, the second Tatung product number is  
20 L17KMBQ-U08.

21 SPECIAL MASTER POPPITI: Okay.

22 MR. CONNOR: If both of those were  
23 linked by Tatung's counsel to the HP product that we have  
24 been discussing, and that was a product that upon

## Teleconference

Page 21

1 receiving that identification, we went out and purchased  
2 an FP7317 on the open market, that, again, is an issue  
3 that apparently Tatung has not done. As Ms. Ho stated,  
4 she was not aware that the product was available from  
5 anyone else because apparently they didn't look anywhere  
6 beyond HP. And that's not the open market, which is what  
7 we did to obtain this product.

8 If what Tatung is going to say is that  
9 different OEMs manufactured the same product that is  
10 sourced by HP -- and keep in mind this is an issue that  
11 we discussed with HP at deposition about a week ago, and  
12 they confirmed that they do source their products out to  
13 multiple OEMs to make sure that they have sufficient  
14 inventory, but the products, as we understood it, are  
15 made the same way. So if Tatung is claiming that they  
16 make their products differently from the way a different  
17 OEM might make this same FP7317 product, then that's an  
18 argument to be made.

19 But at this point I don't see why any of  
20 the parties should be forced to incur the expense related  
21 to an inspection -- however short it may be, forced to  
22 incur that expense and expenditure of time if all we are  
23 trying to determine is that this is or is not a Tatung  
24 product. And if that's the case, then that's an argument

Teleconference

Page 22

1 that Tatung can make.

2 SPECIAL MASTER POPPITI: Well, let me do  
3 this: The approach that I required before I would  
4 consider the opportunity to inspect the product that is  
5 in LPL's possession should be no different today than it  
6 was when I directed that that approach be taken.

7 I now understand that Tatung did check  
8 its own inventory to see if the product was available in  
9 its inventory. I understand that Tatung asked HP whether  
10 it was available. HP advised that it was not. And now  
11 we all understand that there are two products that are  
12 available on the market, if you will. It may be at some  
13 point that an inspection will occur if Tatung comes up  
14 dry after it does the inspection of one or both of these  
15 products. But I will require that that occur first and  
16 that the issue then raised in the May 22nd  
17 correspondence, which is a follow on to the motion that  
18 was heard on April the 17th, be forestalled for final  
19 decision at some later point.

20 MS. HO: Your Honor, this is Valerie Ho.  
21 If I may address the issue of, relating to obtaining the  
22 product --

23 SPECIAL MASTER POPPITI: Yes.

24 MS. HO: -- in the open market. That is

## Teleconference

Page 23

1 not going to help us for the reason that I stated  
2 earlier, which is that those two products, even though  
3 they have the same HP model number may not be the same  
4 product that LPL has in its possession and is accusing of  
5 infringement. And that is because the same HP product is  
6 sourced to different manufacturers and have different  
7 serial numbers and may be different.

8 SPECIAL MASTER POPPITI: And you are not  
9 going to be able to tell that by measuring -- help me  
10 with this. You are not going to be able to tell that by  
11 securing the product -- because that's what we talked  
12 about before, securing the product, inspecting it, and  
13 comparing it to the information you already have with  
14 respect to 7317?

15 MS. HO: You mean the photographs that  
16 LPL provided?

17 SPECIAL MASTER POPPITI: Exactly. It  
18 may be at the end of this that you don't have the  
19 information that you need to make that judgment. And if  
20 at the end of the process that I set up you don't have  
21 sufficient information, it seems to me that it's  
22 appropriate to permit the process to come to conclusion.  
23 You have described for me essentially what it's going to  
24 take in order for you to accomplish that. Namely, it's



## Teleconference

Page 24

1 not going to take you long to purchase one or both of the  
2 products. It's going to take you approximately a half an  
3 hour to 45 minutes to do the inspection/and comparison.  
4 And at the end of that time, whenever that occurs, if you  
5 don't have sufficient information then you will get a  
6 very responsive ear when you next ask for the opportunity  
7 to look at the FP7317 that is in LPL's possession.

8 MS. HO: I understand that, Your Honor,  
9 but I guess my point is, our inspection of the product  
10 that Mr. Connor says is available on another Web site is  
11 not going to give us the information we need regarding  
12 the accused product that is in LPL's possession because  
13 they are two different products.

14 SPECIAL MASTER POPPITI: Let me ask  
15 Mr. Connor the question.

16 Do you agree with Ms. Hoe's assertion?

17 MR. CONNOR: Generally, no, Your Honor.  
18 And the reason is that we are accusing a model number,  
19 not a serial number. As Ms. Ho pointed out, each  
20 individual unit has a unique serial number. We have  
21 accused not the serial number, not a single identifiable  
22 product but an entire range of a model. And there is  
23 nothing that Tatung has ever given us to suggest that  
24 their model, their version of the FP7317 is different

## Teleconference

Page 25

1 from any other OEM's version of the very same product  
2 that was built for HP using HP's directives.

3 And, frankly, if Tatung is able to go  
4 out and buy a different product and determine  
5 conclusively, for example, that the product that they  
6 have is different from the product that we have, that's  
7 an entirely different issue and that's something that we  
8 definitely need to explore. But if they go out and buy a  
9 different product and it turns out it looks just like our  
10 product, even if it's not made by Tatung, then what have  
11 we done? We have just established that the product is  
12 made the same way no matter who makes it. And for either  
13 of the parties to prove a negative, to say that without  
14 -- Tatung has still not given any representations as to  
15 how they are going to determine that our product, if in  
16 fact it is not a Tatung-manufactured product, is  
17 different.

18 I mean, they haven't pointed to any  
19 technical specifications, they haven't pointed to any  
20 drawings, they haven't pointed to any objective  
21 measurement by which they are going to compare the sample  
22 that we have in our possession to their wealth of  
23 knowledge.

24 SPECIAL MASTER POPPITI: But you would

Teleconference

Page 26

1 agree with me at some point it's going to be critically  
2 important to make that determination, is it not?

3 MR. CONNOR: I agree. But that  
4 determination will be wrapped up in part -- and I would  
5 say in large part -- with the determination as to whether  
6 or not the FP7317 is made differently by different OEMs.  
7 And if Tatung can demonstrate they make theirs  
8 differently from any other OEM, that's an issue we need  
9 to get into. But if they are all made the same way, then  
10 that proves its own point, that the product is what it is  
11 and it's assembled the same way from one OEM to another.

12 SPECIAL MASTER POPPITI: I understand  
13 your respective positions. I will require what I said I  
14 would require, and I will permit the revisit of the issue  
15 once the inspection of those products occurs.

16 MR. CONNOR: Thank you, Your Honor.

17 SPECIAL MASTER POPPITI: Okay. Let's  
18 start with what I have numbered 4 for my purposes. I  
19 have numbered this No. 23. And what I have in front of  
20 me is March 30th correspondence from Mr. Cottrell and a  
21 response to that March 30th correspondence dated May 8th  
22 from Mr. Kirk. The issue that is addressed in there is,  
23 they are issues related to prior art.

24 Do you have those documents in mind?

Teleconference

Page 27

1 MR. CONNOR: Yes, Your Honor. This is  
2 Cormac Connor for LPL.

3 SPECIAL MASTER POPPITI: Not hearing  
4 from anyone else --

5 MS. HO: Yes, Your Honor. I have that.

6 SPECIAL MASTER POPPITI: Good. It's an  
7 application to extend. Correct? I mean, take your time  
8 to do this because I know that these are not -- they  
9 weren't agenda'd on a status report, but it seems to me  
10 these are the matters that need to be addressed today.

11 MR. MILLER: Your Honor, this is Scott  
12 Miller.

13 SPECIAL MASTER POPPITI: Mr. Miller.

14 MR. MILLER: My understanding is it was  
15 a request for -- if I am thinking of the right thing it's  
16 a supplementation of prior art based on third-party  
17 discovery, which extended upon the cut-off date for  
18 interparty discovery, if you will.

19 SPECIAL MASTER POPPITI: Right.

20 MR. MILLER: I understood it, I guess  
21 not as a request to extend but more of a request for  
22 clarification, but perhaps that's just a matter of  
23 semantics.

24 SPECIAL MASTER POPPITI: Okay. Do you

Teleconference

Page 28

1 want to discuss it, then, please, for me?

2 MR. MILLER: Yes. My understanding is  
3 that the defendants were seeking clarification about  
4 their ability to supplement their interrogatory responses  
5 with prior art and information learned from the  
6 third-party discovery.

7 SPECIAL MASTER POPPITI: Right.

8 MR. MILLER: My understanding of LPL's  
9 position is that they wanted a reciprocal right to be  
10 able to do the same. There was a concern expressed by  
11 the Tatung defendants, I believe -- and I will let  
12 Valerie speak to that -- that LPL shouldn't have a  
13 reciprocal right because their third-party discovery was  
14 limited by Your Honor to accused products. And so there  
15 wouldn't seem to be a need for a reciprocal right.

16 MS. HO: Excuse me. Sorry. That issue  
17 already had been addressed at the last hearing.

18 SPECIAL MASTER POPPITI: So we are  
19 resolved on this; correct?

20 MR. CONNOR: That's not my  
21 understanding, Your Honor.

22 MS. HO: Yes, it was raised at the last  
23 hearing and it was resolved.

24 SPECIAL MASTER POPPITI: Let's revisit

Teleconference

Page 29

1 it, please, because for some reason I have this down as  
2 not completely resolved. I have got the transcript of  
3 the last hearing being May 4th; correct?

4 MR. CHRISTENSON: Yes, Your Honor. I  
5 think I can clarify. The request by LPL for a time  
6 period by which to supplement was addressed at the prior  
7 hearing.

8 SPECIAL MASTER POPPITI: Right.

9 MR. CHRISTENSON: However, the open  
10 issue is whether the defendants should have a time period  
11 to supplement. That issue has not been addressed.

12 SPECIAL MASTER POPPITI: And that's the  
13 March 30 request?

14 MR. CHRISTENSON: Yes, Your Honor. I  
15 think what had happened was you said we should have an  
16 opportunity to respond and join the issue, which we  
17 recently did on May 8th.

18 SPECIAL MASTER POPPITI: All right. Do  
19 you want to address it, then, please?

20 MR. CONNOR: I will be happy to do that.  
21 Our possession is that there is no need to extend and, in  
22 fact, additional supplementation of the defendants'  
23 interrogatories responses concerning prior art should be  
24 limited to information that they learned, if at all, only

## Teleconference

Page 30

1 after the deadline for supplementation passed. And as we  
2 noted in our May 8th submission, much of the  
3 documentation that LPL learned about, within just a few  
4 days of several of the third-parties' depositions, had  
5 been in defendant's position for months if not more than  
6 a year. And for that reason LPL's position is that there  
7 is no need for additional supplementation based on  
8 documents that defendants had in their possession prior  
9 to March 30th, but chose for whatever reason not to  
10 include them in its supplemental interrogatory responses  
11 that were served at approximately that time.

12 And what we propose is a standard that  
13 would apply to both sides; that being if defendants, for  
14 example, learn of new information today, that's something  
15 that they could supplement. The same would go for LPL.  
16 If we were to discover through a third-party deposition  
17 that there is product out there that we didn't know about  
18 and that should in fact be an accused product that we  
19 would also be entitled to supplement. However, if it's  
20 information that either side had in its possession before  
21 March 30th and, for whatever reason, chose not to include  
22 it in its interrogatory responses, then that issue is  
23 closed.

24 SPECIAL MASTER POPPITI: Who is going to

## Teleconference

Page 31

1 speak, Mr. Miller?

2 MR. MILLER: I will speak on behalf of  
3 ViewSonic, Your Honor. And I think the issue was  
4 originally raised by Mr. Cottrell because there was no  
5 clarity in terms of -- there was a period of time where  
6 third-party discovery was being allowed, but there was no  
7 clarity about how the defendants could process that  
8 information and make sure it got into their interrogatory  
9 responses on a seasonable basis. And rather than just  
10 supplement and serve them, a decision was made that it  
11 would be appropriate to seek guidance from Your Honor  
12 with a proposed cut-off date, which was at the end of  
13 this month, to be able to utilize that information and  
14 put it into the form of a supplemental interrogatory  
15 response coming from the third-party discovery. We have  
16 had depositions as late as this week which have been  
17 significant in terms of identifying aspects of prior art  
18 that need to be incorporated into discovery responses.  
19 And we, for ViewSonic, are certainly diligently working  
20 on it and expect to get something out by the end of this  
21 week or early next week; obviously, by the end of the  
22 month.

23 SPECIAL MASTER POPPITI: Well, if it's a  
24 function of looking for guidance, and I don't want to



## Teleconference

Page 32

1 sound trite, but I know that discovery is ongoing. I  
2 know that we could perhaps even expect that there would  
3 be additional discovery depending upon what happens with  
4 respect to the Markman decision. And I think it's fair  
5 to say that any additional information that is  
6 discoverable is appropriately subject to supplement from  
7 the information that you have gathered.

8                   If what you are asking for is a date  
9 certain when that supplemental discovery should be filed,  
10 then certainly let's talk about it. I don't think my  
11 guidance is any different than the expectation from the  
12 rules themselves. You learn something new, you have an  
13 obligation to supplement based on the new information  
14 that you have learned. If it is something that you've  
15 had and you are late identifying it, then it is likely  
16 not to be supplemental. I mean, I expect that that's a  
17 fair way to characterize what you are asking for, and I  
18 think it's not -- it's consistent with the rule, is it  
19 not?

20                   MR. MILLER: I believe it is, Your  
21 Honor. And that's completely consistent, that would be  
22 all that we would have looked for from Your Honor. I  
23 don't know if Tatung is looking for something more or LPL  
24 is looking for something more.

Teleconference

Page 33

1 MS. HO: This is Valerie Ho, Your Honor.

2 No, we are not looking for anything  
3 more. That was precisely our theme.

4 SPECIAL MASTER POPPITI: So you are not  
5 looking for any deadline? You initially were. I think  
6 the deadline that was proposed would be extended until  
7 May 30th.

8 MS. HO: And that was just to provide a  
9 date.

10 SPECIAL MASTER POPPITI: Sure.

11 MS. HO: By which we would supplement  
12 our interrogatory responses to include information that  
13 we learned from the third-party discovery --

14 SPECIAL MASTER POPPITI: Right.

15 MS. HO: -- that was being conducted in  
16 May.

17 SPECIAL MASTER POPPITI: Is that date,  
18 then, something that is still on the table for purposes  
19 of my considering it?

20 MR. MILLER: Your Honor, this is Scott  
21 Miller.

22 We don't have any objection to setting a  
23 date, I think the whole idea of setting a date was to  
24 have a date by which we would do something so that we

Teleconference

Page 34

1 wouldn't be late or having additional motions to strike  
2 or other things, just as a matter of clarification.

3 SPECIAL MASTER POPPITI: I think a date  
4 makes sense.

5 MR. MILLER: So we are happy to have a  
6 date set, whether it's the end of the month. There is  
7 still some third-party discovery ongoing right now and  
8 some party discovery that's going to take place in June.  
9 So I don't know if we want to set an interim date or we  
10 want to set a complete date.

11 SPECIAL MASTER POPPITI: Or does it make  
12 sense -- and I am happy for you all to have that  
13 conversation now, or does it make sense for you to have  
14 that conversation in light of the upcoming discovery  
15 offline?

16 MR. CONNOR: Your Honor, this is Cormac  
17 Connor for LPL.

18 I guess as a point of clarification, I  
19 believe what Your Honor was instructing the parties was  
20 that if this is information that is new, then, it is  
21 probably properly supplemented. However, if it is, for  
22 example, as we identified in our May 8th submission,  
23 information that has been in any of the parties'  
24 possession for lengthy periods of time, that it is no

Teleconference

Page 35

1 longer -- then providing a supplement at this point is  
2 not seasonable and, therefore, improper.

3 SPECIAL MASTER POPPITI: Well, that's  
4 not my issue now. That's simply what the rules are.

5 MR. CONNOR: Right.

6 SPECIAL MASTER POPPITI: There is no  
7 application before me to deal with that circumstance.

8 The application, as I understand it, is  
9 to, No. 1, receive some guidance -- and I hope the  
10 guidance is clear, if it's not please ask me again. And  
11 following that guidance, the application is for there to  
12 be a date certain so that all issues, if you will, with  
13 respect to supplementation can be expected to be joined  
14 as of a certain date or a timely beyond that date.

15 MR. CONNOR: This is Cormac Connor  
16 again.

17 Your Honor, I'm sorry, would that date  
18 apply to all parties?

19 SPECIAL MASTER POPPITI: It would apply  
20 to all parties.

21 MR. CONNOR: All right.

22 SPECIAL MASTER POPPITI: Does everyone  
23 agree?

24 MR. MILLER: I have no objection to

Teleconference

Page 36

1 that, Your Honor.

2 SPECIAL MASTER POPPITI: Does someone  
3 want to suggest a date that is going to be meaningful so  
4 that we don't have to revisit it, please?

5 MR. MILLER: This is Scott Miller.

6 Perhaps what we could do is, for the  
7 discovery that's taking place during the month of May and  
8 the third-party discovery that's taking place in April  
9 and May set a date of June 8th. Would that be soon  
10 enough? So we have a date for that and then as we have  
11 additional third-party discovery in June, we may have to  
12 revisit the issue again given the expert upcoming time  
13 frames, but this would allow us to do it on a time that  
14 would be seasonable and still make it usable by  
15 everyone's experts.

16 SPECIAL MASTER POPPITI: It makes sense  
17 to me. Do I have a response?

18 MS. HO: That's acceptable to the  
19 Tatung's defendants.

20 MR. CONNOR: We can to that too, Your  
21 Honor. This is Cormac Connor for LPL.

22 SPECIAL MASTER POPPITI: Okay. Then  
23 let's approach it in that way. And I think it would be  
24 important, not just to rely on record here, if local

## Teleconference

Page 37

1 counsel could assist with a stipulation to accomplish  
2 that two-step approach, if you will, a date certain,  
3 namely, June 8th for third party that has been --  
4 third-party discovery that has been conducted in April  
5 and May; then an opportunity to meet and confer, if you  
6 will, on other discovery with another deadline consistent  
7 with the expectation that it should be in a fashion that  
8 is seasonable so that you can use in it conjunction with  
9 the development of the expert reports.

10 MR. KIRK: Yes, Your Honor.

11 SPECIAL MASTER POPPITI: Okay.

12 MR. KIRK: We will work together.

13 SPECIAL MASTER POPPITI: Thank you.

14 The next I have is marked for my  
15 purposes DM 26. It is correspondence from Jim Heisman  
16 dated May 10th. It deals with the database summary sales  
17 information for U.S. sales. The response to  
18 Mr. Heisman's letter was dated May 8th from Mr. Kirk.

19 And unless you have all resolved that  
20 issue I think that's the next one.

21 MR. CHRISTENSON: This is Cass  
22 Christenson for LPL.

23 The May 8th is a supplement to a  
24 March 30th letter we submitted to you, and so we

Teleconference

Page 38

1 supplemented on May 8th.

2 SPECIAL MASTER POPPITI: Yes.

3 MR. CHRISTENSON: And ViewSonic, as you  
4 know, supplemented on May 10th in opposition.

5 SPECIAL MASTER POPPITI: Yes. I  
6 apologize. I had the dates backwards, but the  
7 correspondence right.

8 MR. CHRISTENSON: Those are the right  
9 submissions.

10 And our supplement of May 8th raises  
11 three issues that we wanted to follow-up on. The first  
12 issue, as you noted, is whether ViewSonic should submit  
13 to us a report generated from a database that shows  
14 shipments of accused products by ViewSonic, specifically  
15 to U.S. addresses. In other words, a report that  
16 specifically shows and isolates U.S. sales. As quick  
17 background, we discussed previously that ViewSonic has  
18 produced, I believe that there are summaries of sales to  
19 what ViewSonic calls the Americas.

20 SPECIAL MASTER POPPITI: Yes.

21 MR. CHRISTENSON: Which includes, but is  
22 not limited to, U.S. sales and shipments. And they also  
23 produced some nonU.S. sales and shipments in that region.  
24 And my understanding is that you could somehow take the

## Teleconference

Page 39

1 nonU.S. and somehow deduct it from the U.S. and you would  
2 be able to then presumably calculate the U.S.-specific  
3 sales.

4 The issue that we are addressing is we  
5 believe we are entitled to reports that ViewSonic can  
6 generate that show and isolate specifically the U.S.  
7 sales rather than forcing us to do the cumbersome task of  
8 trying to sort that out through comparing different  
9 documents.

10 And the dispute primarily is whether  
11 that should have to be done by ViewSonic. And we have  
12 submitted -- we have cited some deposition testimony from  
13 a prior case, we had discussed this with you in a prior  
14 hearing. And the idea was that we would offline have  
15 discussions to determine whether ViewSonic was able to  
16 provide U.S.-specific information, and if so whether it  
17 would do so in this case as it did previously. And we  
18 are at an impasse on that, but we cited deposition  
19 testimony that shows that ViewSonic's witness, a rule  
20 30(b)(6) witness in a prior case testified that ViewSonic  
21 is able to generate reports showing specifically U.S.  
22 shipments.

23 And as I understand ViewSonic's  
24 position, those reports would show U.S.-specific



## Teleconference

Page 40

1 shipments by customer rather than by model number  
2 specifically, and ViewSonic does not want to have to do  
3 the math step of adding up for each customer the total  
4 for a given product. And I don't think that's what we  
5 are asking. We are just asking for the report and the  
6 way they can generate it. If the way they can generate  
7 it is specifically, you know, customer by customer with  
8 all the accused products in there, we can add the sales  
9 up for each customer and come to the total. That would  
10 be much easier for us to do, I think, than what we can do  
11 with what we have right now.

12 So we are asking that information be  
13 produced. That a report be run showing the specific U.S.  
14 shipments for accused products, customer by customer, and  
15 that that be produced to us. That's the first issue.

16 I don't know if you want me to address  
17 each of the three issues separately or you just want me  
18 to keep going.

19 SPECIAL MASTER POPPITI: Let's do one at  
20 a time, please.

21 MR. HEISMAN: Your Honor, Jim Heisman on  
22 behalf of ViewSonic.

23 What Mr. Christenson is essentially  
24 asking for is a summary of import-type documents. That

## Teleconference

Page 41

1 was the subject of a prior hearing before Your Honor on  
2 12/28, and Your Honor specifically ruled at that time  
3 that ViewSonic was not required to produce those types of  
4 summaries to LPL, primarily because their request for  
5 production did not request summaries, No. 1. And No. 2,  
6 because these are not the types of documents that are  
7 kept in the ordinary course of business.

8                   Mr. Christenson had referenced some  
9 documents, I believe, that were previously produced by  
10 ViewSonic in distinct and different litigation to show  
11 that ViewSonic is somehow withholding documents from  
12 production. Mr. Christenson had disclosed to us which  
13 Bates-numbered documents that he was referring to. And  
14 in ViewSonic's response that we submitted to Your Honor  
15 on May 10th, we pointed out that in fact these were  
16 documents specifically prepared by ViewSonic's outside  
17 counsel for purposes of that other litigation. Putting  
18 aside --

19                   SPECIAL MASTER POPPITI: And that's the,  
20 I believe that's in the deposition testimony of Ms.  
21 Uphold and --

22                   MR. HEISMAN: Miss Uphold and that would  
23 be Exhibit 1 to ViewSonic's supplemental opposition.

24                   SPECIAL MASTER POPPITI: And Ms. Wang.

Teleconference

Page 42

1 MR. HEISMAN: And there was also some  
2 testimony from Ms. Wang as well that confirmed  
3 Ms. Stetson's testimony that in fact ViewSonic cannot  
4 merely generate summaries of U.S. sales. What we can do,  
5 however, is generate summaries by the Americas to  
6 generate. And isolate the U.S. we would need to  
7 undertake a burdensome task and do it on  
8 a customer-by-customer basis and create a special report  
9 merely for purposes of litigation, which is something  
10 that ViewSonic does not keep in the ordinary course of  
11 business.

12 We believe that Your Honor has ruled on  
13 this issue several times. We have seen nothing new that  
14 that should change Your Honor's calculus and request that  
15 the application be denied.

16 SPECIAL MASTER POPPITI: I guess my  
17 question is: What has changed since I've ruled on this  
18 before?

19 MR. CHRISTENSON: Your Honor, Cass  
20 Christenson.

21 A couple of things: First of all, I  
22 disagree with ViewSonic that this is another request for  
23 import information. This has nothing to do with import  
24 information, which is an issue we specifically addressed

## Teleconference

Page 43

1 previously. This is an issue of whether we are entitled  
2 to reports and data compilations regarding U.S.-specific  
3 shipments.

4 And the reason that's important is --  
5 that it's different is important is that previously you  
6 concluded that we had requested documents sufficient to  
7 determine the amount of imports. The document requests  
8 that are at issue now are different document requests,  
9 and they specifically call for this type of a report.  
10 So, for example, if you have our Rule 7.11 submission.

11 SPECIAL MASTER POPPITI: Just going to  
12 have to give me a moment. One sec. I have it.

13 MR. CHRISTENSON: Your Honor, Exhibit 11  
14 to our Rule 7.11 submission.

15 SPECIAL MASTER POPPITI: Okay, I'm  
16 there.

17 MR. CHRISTENSON: That's LPL's second  
18 set of requests for production. If you will, please,  
19 turn to request No. 17 on page 5. We specifically  
20 requested -- I will just read it for the record: "All  
21 reports and data compilations showing actual monthly  
22 sales in units and U.S. dollars by or for you since  
23 January 1, 2002 concerning each type of digital display  
24 product responsive to interrogatory No. 2."

Teleconference

Page 44

1                   And so this is the request that  
2   specifically called for this type of report or data  
3   compilation.

4                   SPECIAL MASTER POPPITI: Let me ask this  
5   question. I would expect that even though you suggest we  
6   are talking about something different than I ruled on  
7   before, and I will want to hear about that if there is a  
8   different view, when you are looking for all reports and  
9   data compilations, the way I would read that, given the  
10   ruling that I have already made and given what I would  
11   expect should be a consistent ruling with respect to this  
12   different data -- and I will accept your characterization  
13   of it for purposes of making the point -- in my view it  
14   is all reports and data compilations that are generated  
15   in the ordinary course of business.

16                  Now, I mean, I realize we live in a  
17   little bit of a different world than we lived in when we  
18   were -- when we were pulling paper and compiling  
19   information and reports in that fashion. But I'm not  
20   aware of any different guidance, if you will, from either  
21   this District or this Circuit which says simply because  
22   we live in a different world and you've got the talent to  
23   go into a database and create something that is new and  
24   snappy and more clear and more cogent and more focused,

## Teleconference

Page 45

1 if that's not done in the ordinary course of business and  
2 it is only done -- or only done against the backdrop of a  
3 litigation request, it's something that the Court is not  
4 going to direct.

5 So having said that, let's look at what  
6 we are talking about here because I do not intend to  
7 require any party to do, other than what they -- or  
8 provide or produce or create anything that they don't do  
9 in the ordinary course, even if it is easy to go in and  
10 press some buttons and get that report you are looking  
11 for.

12 MR. HEISMAN: Judge, this is Jim Heisman  
13 for ViewSonic.

14 LPL has not come forward with a  
15 scintilla of evidence that ViewSonic has ever prepared  
16 these type of summary documents that they are now  
17 requesting in the ordinary course of business. They  
18 cited to you some snippets that indicated, yeah, it may  
19 be possible and, as Your Honor has correctly observed, in  
20 the digital world anything may be possible with the  
21 appropriate database manipulation. But this is simply  
22 not the case here.

23 What we are talking about are documents  
24 that ViewSonic simply does not use in its business and

Teleconference

Page 46

1 that they would have to create solely for purposes of  
2 responding to a discovery request. And we believe that's  
3 entirely inappropriate.

4 SPECIAL MASTER POPPITI: Mr.  
5 Christenson.

6 MR. CHRISTENSON: Your Honor, to respond  
7 to your point, I do understand your point, my response is  
8 twofold first, with regard to Rule 34 -- I'm going by  
9 recollection here, I apologize, I don't have it in front  
10 of me.

11 SPECIAL MASTER POPPITI: Yes.

12 MR. CHRISTENSON: My recollection is  
13 that it's clear in the committee, though, that it can be  
14 appropriate for a party to produce data, to produce a  
15 report or a compilation of data that exists within the  
16 company's database or computer system as maintained in  
17 the ordinary course of business.

18 And as I understand it, as the second  
19 point, is that's exactly what we are talking about, that  
20 we are talking about data that ViewSonic maintains in the  
21 ordinary course of business. Now if you are asking me --

22 SPECIAL MASTER POPPITI: But what you  
23 are asking them to do is something you can do with the  
24 data. You have just said you can do it. They have given

Teleconference

Page 47

1 you the information, at least this is my understanding.  
2 They have given you information that you can work with.  
3 And I think it was said in an earlier hearing, isn't that  
4 the purpose of gathering information that you can work  
5 with?

6 Now, if you are suggesting to me that  
7 there is some guidance in this District or in this  
8 Circuit that suggests that a party should be required to  
9 go in and, for the ease and sake of the requesting party,  
10 manipulate data and produce a report that the other party  
11 is asking for, I would like to see that. And I'm happy  
12 to review it.

13 MR. CHRISTENSON: Very well, Your Honor.

14 SPECIAL MASTER POPPITI: I will be the  
15 first to admit if I'm wrong, I will tell you I'm wrong.  
16 So if there is something there that I should be looking  
17 at, then make me aware of it.

18 MR. CHRISTENSON: Yes, sir.

19 May I proceed to the second point?

20 SPECIAL MASTER POPPITI: Yes, please.

21 MR. CHRISTENSON: The second and third  
22 issue, Your Honor, are issues that are supplemental to  
23 issues that we had raised in motions that were argued  
24 back in December of 2006. They are not issues that were



## Teleconference

Page 48

1 specifically raised in our March 30th submission, and I  
2 have sent a letter to counsel for ViewSonic on April 24  
3 raising these issues because we are seeking some  
4 information that we feel we need to prepare for  
5 depositions of ViewSonic's witnesses in June. And we  
6 only recently realized that there may be information that  
7 we don't have that in ViewSonic's possession.

8                   We recently talked to ViewSonic about  
9 these other two types of documents -- and I was not on  
10 the call, but as I understand it, ViewSonic's position is  
11 that because there was never any specific ruling from  
12 Your Honor that directed ViewSonic to produce these types  
13 of documents, then ViewSonic did not have a duty to  
14 produce these documents. Our position is that we had  
15 never understood that documents had not been produced.  
16 We thought we had received these types of documents, and  
17 we only recently realized that there is apparently a  
18 dispute about these type of documents.

19                   The first type is --

20                   SPECIAL MASTER POPPITI: Direct me to  
21 specifically where you are referring in your  
22 correspondence, please.

23                   MR. CHRISTENSON: Yes, Your Honor. This  
24 is, on page 2 of our May 8th submission.

Teleconference

Page 49

1 SPECIAL MASTER POPPITI: Right.

2 MR. CHRISTENSON: We first talked about  
3 documents that refer to mounting technology used in  
4 ViewSonic's products. Specifically, of course, we are  
5 positive more interested in rear-mounting technology. So  
6 we would want any documents that reference the use of  
7 rear-mounting technology. And we have pointed to some  
8 documents where ViewSonic's suppliers refer to the use of  
9 either front- or side-mounting technologies of  
10 ViewSonic's products.

11 So that caused us to believe that there  
12 may be documents that refer specifically to rear-mounting  
13 technology. And if there are, we would like to receive  
14 those documents as soon as possible to use in ViewSonic's  
15 depositions. That's the first issue.

16 The second issue is --

17 SPECIAL MASTER POPPITI: Let's focus on  
18 that one for a moment, please.

19 MR. MILLER: Scott Miller, I will speak  
20 to this one.

21 SPECIAL MASTER POPPITI: Please.

22 MR. MILLER: Two issues, I guess, that  
23 come as a result of this. These are matters for which  
24 there was not a meet and confer in advance of filing the

## Teleconference

Page 50

1 motion with Your Honor. There was a letter sent after  
2 the cut off -- I'm struck by Mr. Connor's earlier  
3 statements with regard to if the discovery was closed and  
4 that was the end of it and Mr. Connor and I had the  
5 telephone call that Mr. Christenson referred to earlier  
6 this week, or last week I guess it was, but ViewSonic's  
7 position is that the time for meet and conferring on  
8 discovery that was served in 2005 and 2006 is over.

9 And we are not going to have a record  
10 here and an opportunity to come back in and file new  
11 motions and meet and confer. We did not understand that  
12 to be the situation. If it is the situation, then we  
13 need to meet and confer on these two requests that  
14 Mr. Christenson is going through. And we will also send  
15 some letters to LPL to meet and confer on discovery  
16 requests that we served and would like to meet and confer  
17 on and file motions on now.

18 SPECIAL MASTER POPPITI: Well, there is  
19 a purpose to calling everything at end.

20 MR. MILLER: That was my understanding.  
21 And so we did not respond to his letter raising new  
22 issues because we believed the matter was over.

23 MR. CHRISTENSON: Your Honor, Cass  
24 Christenson, a couple of quick points.

## Teleconference

Page 51

1 First, we are not reopening kitchen  
2 sink, all issues. What we are trying to do is follow-up  
3 on issues that we thought had been resolved and were  
4 raised back in December 2006 in a hearing, but apparently  
5 which were never ruled on specifically. And as a result  
6 of the lack of a ruling, ViewSonic has now produced  
7 documents to us. These are documents that we need for  
8 depositions of ViewSonic's witnesses. The depositions  
9 under the original schedule would have been included by  
10 March 30th, but by cooperation and agreement we extended  
11 the dates for ViewSonic's witnesses to be deposed. And  
12 that brings now with it a sharp -- a couple of discrete  
13 issues where we feel documents should be produced that we  
14 thought we had already received.

15 SPECIAL MASTER POPPITI: Let me do this.  
16 As careful as I hope everyone has been in terms of the  
17 process that was set up to deal with discovery disputes,  
18 part of that process contemplating status reports which  
19 would remind everyone what was done, what yet needed to  
20 be done, developments in the case that were just  
21 important for purposes of understanding where discovery  
22 was; notwithstanding all of that effort, I have to  
23 expect, because I have acknowledged to you during the  
24 course of at least one teleconference -- I can't think of

Teleconference

Page 52

1 the date of it, but there was no question that I had  
2 intended to do something, it didn't get done and I made  
3 the ruling on the record in the context of telling you  
4 that it didn't happen.

5 If what you are saying, with respect to  
6 either or both of these, is that there was an expectation  
7 that there was to have been a ruling, either on the  
8 record or otherwise, and there was no ruling, and by  
9 virtue of that something fell through a crack, then it  
10 seems to me it would be unfair to saddle any party with a  
11 failure on my part.

12 So what I am going to need to have done  
13 is -- I understand that there was a letter filed April  
14 the 24th, which is in fact after the date that the  
15 underlying motion was filed. I now have some better  
16 sense as to what all that means, and I am going to need  
17 you all to revisit it in terms of a meet and confer. And  
18 if you can not resolve it and it was something that  
19 should have been resolved before, I need to be aware of  
20 it.

21 It's a little bit of a different  
22 circumstance, Mr. Miller, than the one you have just  
23 described. I do not intend to open up the process again,  
24 but I certainly want to make sure that every discrete

Teleconference

Page 53

1 issue that was raised is ultimately resolved.

2 MR. MILLER: Your Honor, this is Scott  
3 Miller.

4 That's fine. There were some issues, I  
5 believe, from the December hearing that were raised by  
6 each party in motions that have never been the subject of  
7 a final formal ruling. We can certainly meet and confer  
8 with LPL.

9 SPECIAL MASTER POPPITI: Yes. Please do  
10 that. Because I had anticipated that it was either the  
11 subject of an oral ruling or that you had resolved it.  
12 At least that's what my record keeping shows. If there  
13 is a mistake, I need to be told of that so that I can  
14 back up and do what needs to get done.

15 MR. MILLER: That's fine, Your Honor. I  
16 do believe though -- and we will meet and confer with LPL  
17 on this, but these new requests are outside of the scope  
18 of those prior motions.

19 SPECIAL MASTER POPPITI: If that's the  
20 case, then they are late.

21 MR. MILLER: Okay. That's fine, Your  
22 Honor. We will be happy to sit down and with them and  
23 address these issues on matters that are outstanding from  
24 those original filings and hearing back in December.

Teleconference

Page 54

1 SPECIAL MASTER POPPITI: Okay.

2 Does that cover the third part as well,  
3 Mr. Christenson?

4 MR. CHRISTENSON: It does, Your Honor.  
5 It's the same circumstance. The third part is also an  
6 issue that's outstanding from a previous motion practice.  
7 My only concern is I would like to bring this to a close  
8 as quickly as we can to get these documents before the  
9 depositions of ViewSonic's witnesses.

10 SPECIAL MASTER POPPITI: They start  
11 when?

12 MR. CHRISTENSON: -- I don't have the  
13 schedule in front of me. I believe it's the second week  
14 in June.

15 SPECIAL MASTER POPPITI: All right.  
16 Then what we should do is before we wrap up today is get  
17 a calendar that makes some sense in the next several  
18 weeks.

19 MR. MILLER: Very well, Your Honor.  
20 The next is what I have marked as DM 29.  
21 There was a filing from Mr. Kirk dated May 8th,  
22 supplemental to the March 30th motion to compel, and  
23 there was a response to that dated March 10th.

24 MR. CHRISTENSON: Yes, Your Honor. I

Teleconference

Page 55

1 believe you are referring to LPL's May 8th supplemental  
2 submission concerning Tatung and Tatung's May 10th  
3 response.

4 SPECIAL MASTER POPPITI: That's correct.

5 MR. CHRISTENSON: Cass Christenson,  
6 again, Your Honor, again for LPL.

7 This is similarly a supplemental  
8 submission to you following our March 30th submission  
9 that raises several issues, discrete issues that we would  
10 like to revisit with you because we are concerned that  
11 there may be some gaps in the discovery that we have  
12 received from Tatung.

13 After we filed our March 30th motion, we  
14 have received additional document production from Tatung  
15 that has resulted in some of the issues that we have  
16 raised. And so what we have summarized in the May 8th  
17 submission are the remaining concerns that we have. On  
18 page 2 of our submission, May 8th submission there is a  
19 list of types of documents that we would like to discuss  
20 and that we believe should be produced.

21 SPECIAL MASTER POPPITI: I have that.

22 MR. CHRISTENSON: The first type of  
23 document, Your Honor, are trip reports. These are  
24 reports that summarize and memorialize visits by Tatung



## Teleconference

Page 56

1 company personnel to the United States to visit with  
2 customers for the purpose of sales and marketing of  
3 display products for those customers to import and sell  
4 in the United States.

5 And my understanding is that Tatung  
6 acknowledges that there are such reports. However,  
7 because those reports do not specifically refer to  
8 accused products, Tatung is not going to produce those  
9 reports to us. And this goes back to an agreement that  
10 we had with Tatung that is memorialized in a January  
11 hearing, where there was an agreement that we would be  
12 entitled to discovery from Tatung reflecting sales and  
13 marketing efforts for the U.S. market generally because  
14 those -- as I explained at the time, that discovery shows  
15 Tatung's efforts to communicate and sell to customers for  
16 products generally, which would include implicitly  
17 accused products. But obviously many, many  
18 communications that relate to sales and marketing don't  
19 specifically mention any particular model number of a  
20 product, but they are made to support and encourage and  
21 induce sales all different products, including accused  
22 products.

23 And so there was an agreement that sales  
24 and marketing for the U.S. market generally would be

## Teleconference

Page 57

1 something that would be produced. And we do have some of  
2 that discovery. For example, Tatung has produced supply  
3 agreements with customers that don't mention any  
4 particular model numbers but are clearly relevant because  
5 they were, under those agreements, accused products were  
6 sold as well as other product. So we believe these trip  
7 reports are discoverable under that agreement, even if  
8 they don't specifically refer to an accused product's  
9 model number.

10 SPECIAL MASTER POPPITI: Mr. Merideth.  
11 Who is going to speak?

12 MS. HO: This is Valerie Ho. I  
13 apologize. I thought Mr. Christenson was going to go  
14 through the other remaining portions.

15 SPECIAL MASTER POPPITI: No. And I  
16 apologize for saying Mr. Merideth. I realized that I was  
17 looking down at the transcript when I did that.

18 MS. HO: That's all right, Your Honor.  
19 Your Honor, the issue is, the issue here  
20 is that the parties did have an agreement.

21 SPECIAL MASTER POPPITI: Right.

22 MS. HO: And that agreement was that --  
23 and that's memorialized in the letter that I sent to  
24 Mr. Christenson, that is attached to our supplemental

Teleconference

Page 58

1 motion.

2 SPECIAL MASTER POPPITI: This is your  
3 letter of April 4th?

4 MS. HO: Yes, Your Honor. And  
5 specifically item No. 2 on the first page.

6 SPECIAL MASTER POPPITI: Okay.

7 MS. HO: And what I agreed to do,  
8 contrary to what Mr. Christenson had said, is I agreed to  
9 search for trip reports that referred to the accused  
10 products, either by model number or by product size. And  
11 at the time when we had our meet and confer, I thought  
12 that the agreement was pretty clear that we would not be  
13 producing trip reports relating to unaccused products,  
14 and that was always our position. And I thought it was  
15 pretty clear to Mr. Christenson what we had agreed to  
16 provide versus what we were not going to provide.

17 So after we had our meet and confer and  
18 after I sent that letter, I did speak with my client, and  
19 they went and they searched for trip reports to see if  
20 there were any trip reports that referenced the accused  
21 products. They did not find any trip reports that  
22 mentioned the accused products by size or by model  
23 number. And so our position is we have done exactly what  
24 we said we would do, and we have advised LPL that we just

Teleconference

Page 59

1 don't have any responsive documents.

2 Now Mr. Christenson is now taking the  
3 position that the trip reports somehow relate to general  
4 marketing or sale of products, but that was never the  
5 parties' agreement to begin with. And in fact, Your  
6 Honor, at the April 13th hearing --

7 SPECIAL MASTER POPPITI: Wait just a  
8 moment. Let me pull that, please. Okay. I got that.

9 MS. HO: And that was the hearing during  
10 which LPL's motion to compel first came up. And in  
11 particular I am looking at page 154 and it goes through  
12 156. That's where we were first -- we discussed LPL's  
13 motion to compel. And both Mr. Christenson and I  
14 recognized that LPL's motion as drafted, when it was  
15 filed on March 30th, was pretty broad in that it  
16 encompassed not just documents that related to the  
17 accused products, but LPL essentially was asking for all  
18 documents relating to all products. And subsequent to  
19 March 30th, Your Honor issued your written recommendation  
20 limiting nontechnical discovery to the accused products.

21 SPECIAL MASTER POPPITI: Right.

22 MS. HO: And as a result, I believe,  
23 Mr. Christenson and I recognized that LPL's motion to  
24 compel would be limited to just the accused products.

Teleconference

Page 60

1 And specifically I am looking at page 154, line 14,  
2 through 156, line 7. Where Mr. Christenson states --

3 SPECIAL MASTER POPPITI: Read that for  
4 the record, please.

5 MS. HO: Yes.

6 "MR. CHRISTENSON: And I believe that we  
7 have a common understanding that that entitles LPL to  
8 discovery that either specifically refers to an accused  
9 product or discovery that generally refers to products  
10 that could include accused products, but it doesn't, it  
11 does not include nonaccused products. So we are not  
12 seeking a reconsideration of your report and we are not  
13 seeking to expand discovery to nonaccused products."

14 And then later on on page 155, I sort of  
15 reiterate.

16 MR. CHRISTENSON: Your Honor, I go on  
17 and continue there. If we can just complete the record.

18 SPECIAL MASTER POPPITI: Oh, sure.  
19 Ms. Ho, do you want to read that into the record?

20 MS. HO: Yes, Your Honor.

21 "SPECIAL MASTER POPPITI: Okay.

22 "MR. CHRISTENSON: And your report  
23 specifies that our prior agreement between counsel that  
24 allows us to get discovery related generally to the U.S.

Teleconference

Page 61

1 market sales and marketing generally or the U.S. market  
2 as to product generically is within the scope of  
3 discovery. And you specifically state that agreement  
4 will remain in force.

5 "SPECIAL MASTER POPPITI: Yes.

6 "MR. CHRISTENSON: Do I think it makes  
7 the most sense for us to table this and then see later if  
8 there is anything that we need to revisit?"

9 So I go on to say: Just to clarify one  
10 point. And then I say:

11 "MS. HO: In LPL's motion to compel, LPL  
12 did ask for documents that relate to unaccused products  
13 or all visual display products, but pursuant to my  
14 discussions with Mr. Christenson, our understanding is  
15 that LPL will not be seeking a reconsideration of Your  
16 Honor's written recommendation limiting nontechnical  
17 discovery to the accused products.

18 "SPECIAL MASTER POPPITI: That's what I  
19 understood him to say."

20 And then I say: So that portion of the  
21 motion is no longer at issue.

22 SPECIAL MASTER POPPITI: Okay.

23 MS. HO: And so, Your Honor, my point  
24 simply was that Mr. Christenson acknowledged, I believe,

Teleconference

Page 62

1 at that hearing that LPL's motion to compel would be  
2 limited to the accused products because of Your Honor's  
3 ruling.

4 SPECIAL MASTER POPPITI: Okay.  
5 Mr. Christenson.

6 MR. CHRISTENSON: Thank you, Your Honor.

7 I think it's quite clear in the record,  
8 the part that Ms. Ho initially did not read, I made it  
9 very clear that our possession was that we intended to  
10 continue to enforce the agreement that was in place,  
11 which specifically was -- and the agreement I am  
12 referring to both in this transcript at page 155 and in  
13 my earlier argument today is the agreement that was  
14 confirmed in the January --

15 SPECIAL MASTER POPPITI: 22nd.

16 MR. CHRISTENSON: I believe it's 22nd.

17 SPECIAL MASTER POPPITI: Yes. I think  
18 it is. And if you will give me a moment to get to that  
19 transcript.

20 MR. CHRISTENSON: Your Honor, it's part  
21 of an exhibit to our May 8th submission, if that's  
22 helpful.

23 SPECIAL MASTER POPPITI: It is. Thank  
24 you. Go ahead. I have the full transcript and I have

## Teleconference

Page 63

1 your exhibit.

2 MR. CHRISTENSON: That agreement, Your  
3 Honor, is an agreement that's memorialized, it's on pages  
4 14 and 15 of the transcript. And I raised an issue that  
5 had been discussed in a prior hearing confirming that LPL  
6 was seeking discovery concerning indirect infringement  
7 and relationships between Tatung Company and U.S. brands  
8 for customers, as well as products that entered the  
9 market and are sold through and to those customers and  
10 brands in the U.S.

11 As an example I gave the example of  
12 correspondence between Tatung and ViewSonic or between  
13 Tatung and other U.S. market customers. And I say that  
14 we were concerned that Tatung's position was that they  
15 would limit production to documents that specifically  
16 refer to a specific accused product. And our concern, as  
17 I expressed, is that the documents could refer generally  
18 to relationships and the evidence of inducement as to  
19 products generally and, therefore, be very relevant and  
20 admissible in the case. And if we just limit it to  
21 things that specifically refer to an accused product,  
22 it's going to be too narrow because that's really not the  
23 way that Tatung conducts its business.

24 And just as a follow-on to that, I



Teleconference

Page 64

1 haven't seen the trip reports yet because they haven't  
2 been produced, but I suspect they may not cite any  
3 accused product model numbers because that's just not  
4 something that goes into those reports, even though,  
5 clearly, those trips would not have all been only to  
6 discuss nonaccused products.

7 But anyway, going back to the hearing on  
8 page 15 of the transcript.

9 SPECIAL MASTER POPPITI: I am right  
10 there.

11 MR. CHRISTENSON: Mr. Merideth states:  
12 "I thought we covered this Friday. My specific  
13 recollection was that, to the extent there was general  
14 correspondence for sales and marketing in the United  
15 States generally, for example, was discussed without any  
16 particular model number being referenced that, you know,  
17 I accepted you are entitled to discovery of that. The  
18 limitation is where there is communication between Tatung  
19 and ViewSonic about products that are, specifically about  
20 products that are not accused, that that information  
21 should not be provided."

22 And then Your Honor confirms to me:  
23 "That's what I understood to be the discussion,  
24 Mr. Christenson." And I say: "I appreciate that

Teleconference

Page 65

1 clarification."

2                   So I think it's clear that that was  
3 intended to be the agreement, and I think that obviously  
4 is a different scope of discovery that what Tatung is now  
5 trying to enforce. And they referenced your ruling on  
6 nontechnical discovery, Your Honor, which I also included  
7 as an exhibit. That's Exhibit 3 to our May 8th  
8 submission.

9                   And at the very end, in your conclusion,  
10 on page 10 --

11                  SPECIAL MASTER POPPITI: I remember it.

12                  MR. CHRISTENSON: Your Honor, I don't  
13 think I need to read it for the record, but Your Honor  
14 specifically confirms that your ruling is in no way is  
15 intended to detract from prior agreements between parties  
16 concerning the scope of discovery.

17                  SPECIAL MASTER POPPITI: Right.

18                  MR. CHRISTENSON: So that has always  
19 been my understanding of the scope of discovery. And I  
20 think I confirmed it very clearly in the hearing  
21 transcript that Ms. Ho referred to, and I also confirmed  
22 my understanding of the discussion that I had with Ms. Ho  
23 in my April 3rd letter. She mentioned her April 4th  
24 letter. We have differing recollections of our

## Teleconference

Page 66

1 discussion, but I will just note for the record that in  
2 my April 3rd letter, which is also Exhibit 7 to the  
3 submission, at the bottom of the first page, I state my  
4 recollection of our discussion, which was that Tatung's  
5 production would include discovery that could relate to  
6 accused products in addition to discovery that relates  
7 specifically or expressly to accused products. And I  
8 say: As we discussed, for example, if a trip report  
9 relates to products generally marketed to a U.S.  
10 customer, that purchased accused products, those trip  
11 reports are discoverable regardless of whether they refer  
12 to any specific accused product size or model number.  
13 Assuming that they do not relate solely to nonaccused  
14 products. The scope of nontechnical discovery includes  
15 discovery that relates to accused products, whether  
16 specifically or more generally.

17 And as she noted, she wrote back and  
18 then disputed that, but -- so we have a difference of a  
19 recollection about our discussion at that point. But I  
20 think the record is clear as to what the agreement was.  
21 I think the record is clear that you had intended to  
22 preserve that agreement. And I think the record is clear  
23 that I had intended to preserve that agreement. And so  
24 if these trip reports refer to or reflect sales and

Teleconference

Page 67

1 marketing generally without reference to specific  
2 products, I think that they are within the scope of that  
3 discovery.

4 SPECIAL MASTER POPPITI: Miss Ho.

5 MS. HO: Your Honor, first of all, I do  
6 not agree that no agreement was reached during my meet  
7 and confer with Mr. Christenson. During that meet and  
8 confer it was very clear to me that we did reach an  
9 agreement as to the trip reports. And the agreement was  
10 if the trip reports referred to the accused product by  
11 size or by model number, then those reports would be  
12 produced. And I remember this very specifically because  
13 Mr. Christenson raised the issue of, Well, what if there  
14 is a trip report that didn't specifically have a model  
15 number reference in the report, but that we know from the  
16 size of the product that that product is an accused  
17 product?

18 SPECIAL MASTER POPPITI: Let me do this,  
19 though, before you get into that discussion with respect  
20 to what you expected was your agreement with respect to  
21 trip reports. Let me back up for a moment to the  
22 discussion that did occur on January the 12th.

23 MS. HO: Yes, Your Honor.

24 SPECIAL MASTER POPPITI: Now, I did not,

## Teleconference

Page 68

1 for purposes of today, go back to the reference that  
2 Mr. Merideth made to what we covered the Friday before  
3 the 12th, which was a Monday. But looking at  
4 Mr. Merideth's recitation of what he understood to be the  
5 agreement, looking at what both I said and what  
6 Mr. Christenson said, I expect that it is rather clear  
7 with respect to what Mr. Merideth said. And that is, to  
8 the extent that there was general correspondence where  
9 sales and marketing in the United States -- and then he  
10 goes on. Someone please help me fill in the blank with  
11 what occurred the Friday before, if it's important,  
12 because what I see here is an agreement with respect to  
13 general correspondence.

14 And I gather that there was some  
15 additional -- I know that Ms. Ho would prefer me to call  
16 it at this juncture different, but there was some  
17 discussion as it related to trip reports. Now, I don't  
18 believe, and please correct me if I am wrong, I know you  
19 will, that when we were talking on January the 12th and  
20 when there was an agreement that was re-recited from the  
21 Friday before, that we were talking about trip reports.  
22 Were we?

23 MR. CHRISTENSON: Your Honor --

24 MS. HO: No, we were not, Your Honor.

Teleconference

Page 69

1 MR. CHRISTENSON: -- at the January 19th  
2 hearing I was specifically raising the scope of discovery  
3 in general --

4 SPECIAL MASTER POPPITI: I said  
5 January 12th, I meant the 22nd.

6 MR. CHRISTENSON: I was clearly talking  
7 generally about the scope of discovery related to  
8 inducement. And I didn't go through the litany of every  
9 type of document that could include. And I gave as an  
10 example, and I used the word specifically as an example  
11 of the example of correspondence. But what I was  
12 establishing at that hearing was what would be the  
13 appropriate scope of discovery and would discovery have  
14 to refer specifically to an accused product? And I think  
15 it's very clear that the agreement was that it would not  
16 have to refer specifically to an accused product.

17 SPECIAL MASTER POPPITI: Well, that's  
18 what I need to see. I am, again -- I looked at the 22nd  
19 because that's the transcript that you called out. I  
20 should have been diligent enough to go back through the  
21 Friday transcript, and I am confessing to you that I  
22 didn't do that. So I think it is important, then, for me  
23 to understand more precisely the context of the  
24 transcript of the 14th. Because what I intend to do is

Teleconference

Page 70

1 what I intended to do. And that is to require that you  
2 honor your respective agreements.

3 If the agreement is as broad as  
4 Mr. Christenson says it is, then Ms. Ho, without  
5 conceding anything, would you not agree that if it is as  
6 broad as he suggests, there would have been no need to  
7 discuss any different arrangement with respect to trip  
8 reports? Is that fair or am I asking you to concede  
9 something you don't want to concede?

10 MS. HO: No. I think that's fair. And  
11 the point is we did specifically discuss trip reports.

12 SPECIAL MASTER POPPITI: I just simply  
13 need to get back, if you are mindful of where that was  
14 discussed on the Friday before the --

15 MS. HO: I am searching for that.

16 SPECIAL MASTER POPPITI: I have papers  
17 in front of me.

18 MR. CHRISTENSON: I will look as well,  
19 Your Honor.

20 SPECIAL MASTER POPPITI: I am doing it  
21 like a dinosaur. I have papers in front of me. I can  
22 expect that you are probably searching on screens, and I  
23 admire you all for that, truly.

24 MR. CHRISTENSON: I am actually working

Teleconference

Page 71

1 with a hard copy myself.

2 MS. HO: I am too, Your Honor.

3 SPECIAL MASTER POPPITI: Then I'm glad.

4 It's January 19th, and I don't remember whether that was  
5 a Min-U-Script. Fortunately, it is.

6 I mean, would it be to our benefit now  
7 to look at that or would it suffice for me to suggest  
8 that if the agreement or the context of the  
9 re-recitation, if you will, of the agreement -- even  
10 though the context says general correspondence, if the  
11 context of the use of the phrase general correspondence  
12 was for purposes of using an example, and if the  
13 agreement that was actually forged the Friday before the  
14 Monday was broader than that, then it seems to me that  
15 that would encompass trip reports. If that is the case,  
16 then I can do the template or you can do the template,  
17 it's the same rule.

18 MS. HO: Your Honor, just to clarify,  
19 what Mr. Merideth had said at the January 22nd hearing  
20 was not just limited to general correspondence, it was,  
21 what he said was to the extent that there are general  
22 correspondence where sales and marketing in the United  
23 States generally --

24 SPECIAL MASTER POPPITI: Yes, I



Teleconference

Page 72

1 understand that.

2 MS. HO: I think that's an important  
3 distinction, because I believe what Mr. Merideth said --  
4 and I'm still searching through the transcript, but I  
5 believe what he meant was if there are general  
6 correspondence that discusses sales and marketing in  
7 general in the United States, that do not refer to any  
8 accused products or do not pertain to any accused  
9 products.

10 SPECIAL MASTER POPPITI: Then you get  
11 that.

12 MS. HO: For example, if there is a  
13 document from Tatung that says, you know, this is how we  
14 will market our products to customers in the United  
15 States or this is how we will target the United States  
16 market, then those documents would be produced.

17 SPECIAL MASTER POPPITI: Okay. And then  
18 there is a second category; correct? And that is the  
19 same description of document except that it calls out an  
20 accused product, that would be produced as well?

21 And the only carveout, if I understood  
22 what you just said, Ms. Ho, in terms of completing where  
23 I expect you were going, the only carveout would be the  
24 same type of correspondence that calls out accused

Teleconference

Page 73

1 products; right? -- unaccused, and they would not be  
2 discoverable?

3 MS. HO: Correct, Your Honor. So there  
4 would be documents, for example, that would call-out,  
5 that would have a call-out for accused products.

6 SPECIAL MASTER POPPITI: Yes.

7 MS. HO: And those have been produced.  
8 There may be documents that --

9 SPECIAL MASTER POPPITI: Were generic.

10 MS. HO: -- refer to the U.S. market  
11 that do not mention any accused products.

12 SPECIAL MASTER POPPITI: They are  
13 produced.

14 MS. HO: They have been produced.

15 SPECIAL MASTER POPPITI: Okay.

16 MS. HO: So the only issue is, do we  
17 have to produce documents that we know relate to  
18 unaccused products? And that issue I thought already had  
19 been addressed at the April 13th hearing, by what  
20 Mr. Christenson said, that issue was addressed at our  
21 meet and confer that I had with Mr. Christenson, I  
22 thought, and apparently now I am told that that issue  
23 hasn't been addressed.

24 MR. CHRISTENSON: Just to be clear, we

## Teleconference

Page 74

1 are not seeking -- we have consistently not sought  
2 discovery related solely to nonaccused products, and we  
3 are not trying to get that discovery now. We understand  
4 that if a document specifically references an accused  
5 product, obviously that's within the scope of discovery.

6 I think where the dispute exists is,  
7 based on the history of the case, it was clear to me --  
8 and I think it's clear in the record -- that there was an  
9 understanding that the scope of discovery would include  
10 discovery related to sales and marketing of products  
11 generally because that general sales and marketing  
12 context would relate to accused products as well as other  
13 products. And so it would relate in part to accused  
14 products.

15 SPECIAL MASTER POPPITI: I thought  
16 Ms. Ho just said that that's been produced.

17 MR. CHRISTENSON: I think as we apply  
18 that concept to the trip reports, I don't think they have  
19 been produced because I think Ms. Ho's position is that  
20 they don't specifically refer to accused products. And  
21 again, my concern is that we are now backtracking from  
22 the agreement and because they relate to -- there is  
23 nothing to suggest those trips were not for sales and  
24 marketing of products including accused products and,

Teleconference

Page 75

1 therefore, I believe they should be produced.

2 MS. HO: Well, see, Your Honor, the  
3 problem is that LPL assumes that, one, these documents  
4 exist. And two, it assumes that it knows what is  
5 contained in these documents.

6 First of all, there is no suggestion and  
7 no evidence that the trip reports even relate to sales  
8 and marketing to begin with. So Tatung employees may  
9 have visited the United States for other reasons other  
10 than to sell a product or to market a product. So that's  
11 the first point.

12 The second point is, some of these  
13 reports do refer to products, but they are not the  
14 accused products, and they may not even be visual display  
15 products.

16 SPECIAL MASTER POPPITI: Well, then they  
17 don't get produced.

18 MS. HO: Correct. And that is why we  
19 have performed the search, and we have informed LPL that  
20 we have not been able to locate any responsive documents.

21 SPECIAL MASTER POPPITI: Well, I don't  
22 know how to get any more precise information than what I  
23 think I already have. And I think what I understand  
24 Ms. Ho to say is that she is not quibbling with the

Teleconference

Page 76

1 phrase general correspondence for sales and marketing in  
2 the United States generally. She is not suggesting that  
3 that excludes trip reports. If I understand what she is  
4 saying correctly is that the agreement encompasses trip  
5 reports, that the agreement with respect to trip reports  
6 is no different than the agreement with respect to the  
7 example used general correspondence.

8 Is that correct, Ms. Ho?

9 MS. HO: Yes, Your Honor.

10 SPECIAL MASTER POPPITI: Well, with that  
11 understanding, if the representation is that what has  
12 been produced is all that there is, I can't do any more  
13 than that.

14 And that's the representation of  
15 counsel. Correct?

16 MS. HO: Yes, Your Honor.

17 SPECIAL MASTER POPPITI: Okay.

18 Mr. Christenson.

19 MR. CHRISTENSON: Yes, thank you, Your  
20 Honor.

21 So I understand it, the representation  
22 is there are no trip reports that relate to sales and  
23 marketing of unspecified display products?

24 SPECIAL MASTER POPPITI: That's what I

Teleconference

Page 77

1 understood Ms. Ho to say.

2 MR. CHRISTENSON: Very well, Your Honor.

3 The next issue that we raised is the  
4 issue of presentation materials regarding display  
5 products. And this refers to documents that Tatung has  
6 provided to its customers and brands in the U.S.  
7 regarding display products that Tatung could supply,  
8 which includes -- those presentation include information  
9 generally about Tatung Company, sales-and-marketing-type  
10 information to promote Tatung's products generally which,  
11 again, would be the within the scope of the agreement we  
12 just discussed. And in some cases there is some partial  
13 model information as well.

14 We recently received document  
15 productions from third parties, Your Honor, including  
16 Hewlett Packard and Tatung Science and Technology, Inc.  
17 or TSTI, which is a Tatung subsidiary company in  
18 California, that Tatung uses as a sales agent to work  
19 with companies, including, for example, WalMart. And we  
20 have asked for -- we want to make sure that we have all  
21 of the presentation materials that Tatung has given to  
22 its customers that refer generally to sales and marketing  
23 for display products for the U.S. or refer specifically  
24 to accused products. And to give you an idea of what

Teleconference

Page 78

1 this looks like, Exhibit 6 to our May 8th submission --

2 SPECIAL MASTER POPPITI: I have it.

3 MR. CHRISTENSON: As an example, Your  
4 Honor. This is a document that was produced by HP, dated  
5 January 20, 2006. It's a Tatung document. The title is  
6 Tatung Display Business Update. And this gives some  
7 general sales and marketing information to the customer.  
8 And then it also gives some references to specific Tatung  
9 product numbers. For example, if you would turn to,  
10 please, page HP58627.

11 SPECIAL MASTER POPPITI: I have it.

12 MR. CHRISTENSON: There is a reference  
13 there, on the left-hand side, to the product No. L17AMTM.  
14 You may recall that was a product that we specifically  
15 identified in our complaint in this case as an accused  
16 product.

17 SPECIAL MASTER POPPITI: Just one  
18 moment. 58626?

19 MR. CHRISTENSON: 27, Your Honor. I'm  
20 sorry.

21 SPECIAL MASTER POPPITI: I see it now.

22 MR. CHRISTENSON: There is a reference  
23 to the L17AMTN, which is an accused product. If you  
24 would turn a couple of pages over, page 58629, for

Teleconference

Page 79

1 example. There is a reference to a -- in the middle of  
2 the page it says L20W.

3 SPECIAL MASTER POPPITI: I see that.

4 MR. CHRISTENSON: Under that it says  
5 20.1-inch, that refers to a 20-inch or 20.1-inch LCD  
6 monitor product. And Tatung specifically has supplied a  
7 monitor of that size with that same WSXGA, I believe,  
8 resolution that's indicated there, presumably the same  
9 thing that's being marketed in this document. And that's  
10 a product that we have accused of infringing. I think  
11 the HP product number is HPL2045W. But that's a product  
12 that is addressed here.

13 And then one final place to look. If  
14 you could turn, please, to page 58651.

15 SPECIAL MASTER POPPITI: Okay.

16 MR. CHRISTENSON: At the top it says:  
17 Quotation for North America. It's giving price quotes to  
18 HP from Tatung, prices at which Tatung would supply  
19 products.

20 The third column heading shows that the  
21 delivery of the product would be to Fort Worth, Texas,  
22 which is an HP location. And one of the products listed  
23 on the left is a 20.1-inch wide LCD monitor. And this is  
24 a good example, Your Honor, of why it was important for



Teleconference

Page 80

1 us to get the agreement that we obtained, which avoided  
2 the need to get a ruling from you that the scope of  
3 discovery wouldn't be limited to something that had a  
4 specific model number, because here, if you look at this  
5 in context, you can see that there is an accused product  
6 referenced here, but it doesn't have the HP accused  
7 number here. And in the quotation section it's got the  
8 size listed, but not the model number listed.

9 SPECIAL MASTER POPPITI: I understand.

10 MR. CHRISTENSON: So this is the type of  
11 document that we would like to receive. And we realized  
12 that we didn't have all of these documents apparently  
13 after we received productions from HP. And we found  
14 documents such as this.

15 So we would like to get a supplemental  
16 production to make sure that we have got all of the  
17 responsive documents.

18 MS. HO: Your Honor, may I respond?

19 SPECIAL MASTER POPPITI: Yes, please.

20 MS. HO: The fact of the matter is we  
21 have searched for presentation materials and we have  
22 provided those materials to LPL. Some of those documents  
23 refer to specific model numbers, some of those documents  
24 merely refer to the products by size. Regardless, we

Teleconference

Page 81

1 have provided the documents we have been able to locate.

2 Upon receiving LPL's supplemental brief  
3 and the HP document that is referenced as --

4 SPECIAL MASTER POPPITI: I just missed  
5 you, Ms. Ho, there was something interrupting. If you  
6 will go back. You were referencing HP.

7 MS. HO: Upon receiving LPL's  
8 supplemental brief and the document that is attached as  
9 Exhibit 6, the document that HP produced.

10 SPECIAL MASTER POPPITI: Yes.

11 MS. HO: We went back to Tatung and we  
12 asked them to search for this document. This document  
13 could not be located upon performing a diligent search by  
14 Tatung. And so the simple response is this document  
15 wasn't produced because we didn't have it to be produced.

16 Now, Mr. Jackson Chang, who is, who was  
17 one of the Tatung witnesses who was deposed, did testify  
18 in his deposition that often times presentation materials  
19 would be -- and I think he used a word refreshed, but  
20 what he meant was saved over. So, basically, the  
21 presentation materials are similar but, you know, certain  
22 portions would be added or deleted, depending on the  
23 presentation and depending on who the presentation was  
24 being made to.

Teleconference

Page 82

1                   So it's entirely possible that this  
2 document was saved over and that's why it hasn't been  
3 located. But we have asked the client to search for it  
4 and they have been unable to locate it.

5                   SPECIAL MASTER POPPITI: Well, then, if  
6 I understand you, correctly, with respect to presentation  
7 documents you have looked for and you have produced  
8 everything that you have that -- when you became aware of  
9 the fact that a document that was produced by HP was  
10 something that you did not produce, you searched, you  
11 couldn't find it.

12                  MS. HO: Correct.

13                  SPECIAL MASTER POPPITI: And,  
14 Mr. Christenson, I'm not sure what else there is to do  
15 other than I have counsel representing that they have  
16 produced all that they have.

17                  MR. CHRISTENSON: Your Honor, I hear  
18 what is being said. And my only thought is, I guess, I  
19 don't know, No. 1, whether the inquiry back to Tatung was  
20 limited to see whether this document that we already have  
21 should have been produced by Tatung, because if that's  
22 the case, I would like it to be broadened.

23                  For example, there are 42-inch plasma  
24 televisions that Tatung has supplied to HP that are

Teleconference

Page 83

1 accused, and I don't think we have received any sales and  
2 marketing materials that reference that product. I can't  
3 say that for sure, I don't recall that.

4 SPECIAL MASTER POPPITI: Ms. Ho.

5 MS. HO: I can't speak to that because I  
6 don't have our entire document production in front of me,  
7 but to the extent that counsel is referring to a newly  
8 accused product, and by "newly accused," I mean a product  
9 that was accused as of several weeks ago, then he is  
10 correct. We haven't produced documents relating to those  
11 products because we are still in the process of searching  
12 for those documents.

13 SPECIAL MASTER POPPITI:

14 Mr. Christenson, you have your answer, I believe.

15 MR. CHRISTENSON: It sounds like there  
16 is further supplement that may will include that product.  
17 I don't know that's a newly identified product. But in  
18 any event, I am assuming that any leftover documents will  
19 be rolled into this upcoming production. And I guess  
20 with respect to whether they have these documents, I am  
21 assuming they would have them somewhere because, for  
22 example, the one I just referenced was dated  
23 January 2006, which was well after we filed the lawsuit.  
24 And so I am assuming those documents would exist, but we

Teleconference

Page 84

1 will look for that in the supplemental production.

2 SPECIAL MASTER POPPITI: Okay. Next  
3 issue, please.

4 MR. CHRISTENSON: Yes, Your Honor.

5 The next issue relates to correspondence  
6 and communications with certain customers. After we  
7 filed our March 30th motion, there was substantial  
8 additional production from Tatung that included some  
9 additional correspondence and e-mails, for example. And  
10 that was how we learned that we didn't have some of the  
11 communications between ViewSonic and Tatung that I  
12 mentioned earlier that we would like to obtain from  
13 ViewSonic.

14 But one of the things that we don't  
15 still have, I think, are communications between Tatung  
16 and Hitachi and communications between Tatung and  
17 WalMart. Tatung has supplied WalMart with many products  
18 that we accused of infringing and that we have accused of  
19 infringing for some time. And as I understand Tatung's  
20 motion, they said that those documents would be produced  
21 -- documents reflecting communications related to accused  
22 WalMart products would be produced by TSTI, the  
23 subsidiary. And you indeed TSTI, the subsidiary,  
24 produced many responsive documents recently and I deposed

Teleconference

Page 85

1 the representative for TSTI. But I don't think that any  
2 production by TSTI should excuse Tatung's separate  
3 obligation to produce its own responsive documents.

4 So I would like to receive what  
5 discovery Tatung also has.

6 SPECIAL MASTER POPPITI: Ms. Ho.

7 MR. CHRISTENSON: Regardless of what  
8 TSTI may or may not have in its custody or control.

9 SPECIAL MASTER POPPITI: Ms. Ho.

10 MS. HO: Your Honor, first of all, with  
11 respect to Hitachi, we have produced correspondence  
12 between Tatung and Hitachi relating to the accused  
13 products or the one accused product that we were aware of  
14 until recently. I believe LPL may have accused  
15 additional Hitachi products, and to the extent it has we  
16 will be supplementing --

17 SPECIAL MASTER POPPITI: Okay.

18 MS. HO: -- relating to those newly  
19 accused products.

20 With respect to WalMart, we have already  
21 explained this to LPL and LPL knows this because  
22 Mr. Christenson did depose TSTI. It is TSTI that has the  
23 majority of the communications or most of the  
24 communications with WalMart. And that is why we informed

Teleconference

Page 86

1 LPL that TSTI would be the party that will be producing  
2 that correspondence, not Tatung. And that correspondence  
3 already has been produced. So it's sort of a nonissue  
4 here, Your Honor, because LPL already has all of those  
5 documents that it claims it needs.

6 SPECIAL MASTER POPPITI: So what I think  
7 Mr. Christenson was asking for was whether you have  
8 documents, whether Tatung has documents related to  
9 WalMart that are discoverable and that should be produced  
10 independent of those documents that are in the possession  
11 and control of TSTI.

12 And I think you have just said, in so  
13 many words, that Tatung does not. Is that correct?

14 MS. HO: Well, most of the  
15 communications would be between TSTI and WalMart.

16 SPECIAL MASTER POPPITI: Okay. Well,  
17 when you say most, does that suggest that there are  
18 documents?

19 MS. HO: I say most, because I don't  
20 have the documents in front of me.

21 SPECIAL MASTER POPPITI: Okay.

22 MS. HO: But from what I recall, based  
23 on my review of the TSTI production, was that all of the  
24 correspondence -- I don't want to say all, because I

Teleconference

Page 87

1 don't have it in front of me; but I can't recall one  
2 e-mail that was between Tatung and WalMart as opposed to  
3 TSTI and WalMart. And based on my review of the TSTI  
4 documents, I believe the communications were really  
5 between TSTI and WalMart.

6 SPECIAL MASTER POPPITI: Okay.  
7 Mr. Christenson.

8 MS. HO: And in any event, all of those  
9 up documents already have been produced, weeks ago.

10 MR. CHRISTENSON: Your Honor, this is  
11 Cass Christenson.

12 From what I understand was said, most of  
13 the majority of communications related to the accused  
14 WalMart products involved TSTI. And I can confirm, from  
15 reviewing TSTI's production, that TSTI and Tatung both  
16 have employees as e-mail participants, for example, in  
17 the documents that were produced. But there is nothing  
18 to suggest that I am aware of that Tatung has not had  
19 communications independently with WalMart or that we have  
20 received all of the responsive documents from TSTI, which  
21 could include documents that TSTI was not able to locate.

22 So all I'm asking is that documents that  
23 Tatung does have be produced, if they are responsive.

24 SPECIAL MASTER POPPITI: Well, I would



Teleconference

Page 88

1 expect that they would be produced if they are  
2 responsive. Ms. Ho.

3 MS. HO: Yes, Your Honor. And I'd agree  
4 with that to the extent they relate to the accused  
5 product.

6 SPECIAL MASTER POPPITI: Right.

7 MS. HO: As far as I'm aware, I am not  
8 aware of any communications that Tatung had with WalMart,  
9 and that's Tatung, not TSTI, relating to the accused  
10 products. But I will go back and check again, just to  
11 make sure.

12 SPECIAL MASTER POPPITI: All right.  
13 Then I can expect that you will go back, check again, and  
14 that someone should advise me of the status of that,  
15 please.

16 MR. CHRISTENSON: Your Honor, when would  
17 you like a status report?

18 SPECIAL MASTER POPPITI: Well, let's  
19 wrap that into whatever dates we are going to establish  
20 for what other work we have beyond Markman. Okay?

21 MR. CHRISTENSON: Yes, sir.

22 SPECIAL MASTER POPPITI: Thank you. I  
23 think that deals with everything in the May 8th, does it  
24 not?

Teleconference

Page 89

1 MR. CHRISTENSON: There are a couple of  
2 minor housekeeping issues left there, Your Honor. We  
3 received a customer list that shows what is called the  
4 U.S.A. customer number for various display products of  
5 Tatung. And that list, which we received from Ms. Ho's  
6 firm has a heading at the top that says TAMIS code, and I  
7 have asked repeatedly for just an explanation of what the  
8 TAMIS code is, but that's something that we haven't been  
9 able to resolve. So I would like to see if I can just  
10 get an explanation of what that refers to so I can  
11 understand what that heading is.

12 SPECIAL MASTER POPPITI: Did someone  
13 just join us or did we lose someone?

14 MR. KIRK: Your Honor, it's Dick Kirk.  
15 I apologize, I dropped off and just rejoined.

16 SPECIAL MASTER POPPITI: Thank you very  
17 much.

18 Ms. Ho, do you have an explanation or  
19 will one be forthcoming?

20 MS. HO: Your Honor, there was no  
21 agreement to provide additional deposition answers  
22 relating to these documents. I mean, our position, to  
23 begin with, is that that document is not relevant,  
24 period, because all it shows are the internal customer

Teleconference

Page 90

1 numbers that Tatung uses to refer to certain U.S.  
2 customers.

3 And as we explained in our opposition to  
4 LPL's motion to compel, those numbers don't provide any  
5 sort of useful information to LPL whatsoever, because  
6 they don't tell LPL whether the customers bought the  
7 products or the U.S. market as opposed to the Mexico  
8 market or the European market. They don't tell LPL which  
9 customers bought which accused products.

10 That list has no relevant information  
11 whatsoever. And as for the information that LPL claims  
12 it needs, for example, which U.S. customers bought which  
13 accused products, we have already provided that  
14 information to LPL.

15 So this is really a nonissue and for LPL  
16 to now demand additional information is just -- to us,  
17 it's harassment at this point, to be honest, Your Honor,  
18 because it really provides no relevant information that  
19 could remotely be useful to LPL.

20 SPECIAL MASTER POPPITI: All right.  
21 Mr. Christenson.

22 MR. CHRISTENSON: Yes, Your Honor. This  
23 is a list I did not have until after the depositions of  
24 the Tatung witnesses, but my concern is that there must

## Teleconference

Page 91

1 be some meaning to the heading TAMIS code above the  
2 customer numbers, and I don't want to be -- I think it's  
3 unfair for them to produce this with that heading, after  
4 the deposition, and then tell me they know what it means  
5 and I don't. And I think it could put me in an unfair  
6 position at some point if they are going to rely on  
7 something that means -- you know, for example, at trial  
8 when there is a witness testifying about this document  
9 and I was never -- and I never had the opportunity in  
10 advance to understand what it means.

11 MS. HO: I can tell you right now that  
12 we will not be discussing that document at trial. We  
13 will not be calling a witness to discuss that document.  
14 That document will not be used at trial. And, frankly,  
15 that document is irrelevant.

16 SPECIAL MASTER POPPITI: Well, that  
17 answers that question, Mr. Christenson.

18 MR. CHRISTENSON: Yes, Your Honor, as  
19 long as they are not going to rely or elicit any  
20 testimony relating to TAMIS code at trial. Obviously, we  
21 reserve the right to use this document at trial. But if  
22 they are not going to make any effort to explain that  
23 term or what that term means at the trial in any context,  
24 then, that's fine with me, I don't need to know what it

Teleconference

Page 92

1 means.

2 SPECIAL MASTER POPPITI: Ms. Ho.

3 MS. HO: That's fine, Your Honor.

4 SPECIAL MASTER POPPITI: Thank you.

5 Next issue, please.

6 MR. CHRISTENSON: Your Honor, the next  
7 issue is we are still waiting for Tatung to identify  
8 which sales representatives Mr. Tse (sic) consulted for  
9 purposes of his declaration that was required as a result  
10 of him not being prepared for certain parts of his  
11 deposition. And at the prior hearing, I put on the  
12 record the fact that we have an agreement among counsel  
13 that Mr. Merideth is going to provide us with the names  
14 of the people that Mr. Tse spoke to.

15 As you may recall, his declaration was  
16 very cryptic.

17 SPECIAL MASTER POPPITI: I remember it  
18 was brief.

19 MS. HO: Your Honor, we will provide  
20 that information.

21 SPECIAL MASTER POPPITI: I'm sorry.

22 MS. HO: We will provide the names to  
23 Mr. Christenson.

24 SPECIAL MASTER POPPITI: Thank you.

Teleconference

Page 93

1 MS. HO: I don't think that's related to  
2 the motion to compel production of documents but, in any  
3 event, we will give that information.

4 SPECIAL MASTER POPPITI: Thank you.

5 MR. CHRISTENSON: Can we get any kind of  
6 time frame for that?

7 MS. HO: Tomorrow?

8 MR. CHRISTENSON: That's fine. Thank  
9 you.

10 MR. CHRISTENSON: And the last issue,  
11 Your Honor, is we requested a deadline for the  
12 supplemental discovery that we are expecting from Tatung  
13 Company, and I think it's important to set the deadline,  
14 mindful of the fact that we have expert reports due in  
15 fairly short order because some of this discovery is  
16 going to be critical in order for us to use that  
17 information for purposes of our expert reports. And, for  
18 example, specifically we would want to make sure that we  
19 had all of the relevant sales information necessary to  
20 calculate damages for the report to be prepared by our  
21 damages expert.

22 So I think it's important to set a time  
23 frame. We had proposed, in our May 8th submission, a  
24 deadline of May 22nd, and Tatung responded, in their

Teleconference

Page 94

1 May 10th submission, by proposing a deadline of  
2 June 29th. I would certainly like it to be -- obviously,  
3 May 22nd is gone.

4 SPECIAL MASTER POPPITI: We missed it.

5 MR. CHRISTENSON: We missed it. So I  
6 certainly don't want to wait until the end of next month.  
7 Certainly it would not give us time to get our report  
8 out. And if that were the case, we would want to be  
9 considering an extension on our damages report.

10 SPECIAL MASTER POPPITI: And I don't  
11 want to be jockeying those dates.

12 Ms. Ho, can you propose a date that is  
13 different than what was originally proposed?

14 MS. HO: Well, here is what I propose,  
15 Your Honor, with respect to the information that  
16 Mr. Christenson claims or contends he needs for the  
17 damages report -- and that would be the sales summary for  
18 the newly accused products and -- actually that's it,  
19 just the sales summaries for the newly accused  
20 products -- I could produce that information before  
21 June 29th. I could produce that probably by, let's see  
22 -- I'm sorry, I'm just looking at my calendar.

23 SPECIAL MASTER POPPITI: Okay.

24 MS. HO: By June 15th.

Teleconference

Page 95

1 SPECIAL MASTER POPPITI: All right.

2 Mr. Christenson, that should be sufficient time should it  
3 not?

4 MR. CHRISTENSON: The opening report is  
5 due July 16th, I believe that's the date?

6 SPECIAL MASTER POPPITI: Yes.

7 MR. CHRISTENSON: If we had everything  
8 by June 15th, that would probably be sufficient, Your  
9 Honor.

10 MS. HO: I am referring to the documents  
11 that you were talking about earlier, the sales data.

12 MR. CHRISTENSON: If we have everything  
13 we need for our purposes of that report, and the most  
14 critical information is the sales data, if there is  
15 anything else that we need, I will raise that with  
16 Ms. Ho.

17 SPECIAL MASTER POPPITI: Okay.

18 MS. HO: Let me know, if there is  
19 additional information that you need for the expert  
20 report, please let me know and I will try to get you that  
21 information sooner rather than later.

22 Now, with respect to supplementations  
23 that we don't believe will be used in any of the expert  
24 reports, for example, correspondence relating to the



Teleconference

Page 96

1 newly accused products, e-mails or presentations or  
2 things like that, you know, we would require a little  
3 more time to gather those documents, simply because there  
4 are so many documents that we would need to go through.

5 SPECIAL MASTER POPPITI: Well, do you  
6 want to be picking a date now or just leave the 15th on  
7 the table for sales-related information, sales-related  
8 documents?

9 MR. CHRISTENSON: Your Honor, I think my  
10 understanding is, in the May 10th, they had proposed  
11 June 29th or everything and now they are saying that they  
12 will expedite to June 15th the sales data.

13 SPECIAL MASTER POPPITI: That's correct.

14 MR. CHRISTENSON: And I understand the  
15 remainder will be produced by the end of June.

16 SPECIAL MASTER POPPITI: Ms. Ho, if that  
17 makes sense we will just keep the June 29th date for  
18 everything other than the sales data that's needed for  
19 the reports and any other information that you and  
20 Mr. Christenson agree to by the 15th?

21 MS. HO: Yes, Your Honor. The only --  
22 my only problem with that is after we submitted our  
23 supplemental brief, I made vacation plans for June. So  
24 if there is a way that I could have an extra week,

Teleconference

Page 97

1 because I don't get back until the 27th of June,  
2 unfortunately. If I could have an extra week to complete  
3 all of our supplementation, I would certainly appreciate  
4 that.

5 SPECIAL MASTER POPPITI: Mr.  
6 Christenson.

7 MR. CHRISTENSON: Well, I guess what I  
8 would like to do, Your Honor, is to see if there is a way  
9 we could try to meet that deadline. If we need to work  
10 out an extension later, we certainly could discuss that  
11 with opposing counsel. But what I am hoping is perhaps  
12 there are others that can help to try to get it done in  
13 what would be more than a month from today.

14 SPECIAL MASTER POPPITI: Let's do this.  
15 We'll all be working very closely together over the next  
16 -- into the next week. If Ms. Ho is in a position to  
17 reach out to someone that she has been working with and  
18 they can assist in getting it done by the 29th, then I  
19 will know that by next Wednesday. And if, because it's  
20 important for Ms. Ho to keep hands on, it's not going to  
21 get out of there for another five days to seven days, I  
22 will permit that to occur.

23 But I would like the good-faith  
24 representation that, Ms. Ho, you are going to be looking

Teleconference

Page 98

1 for others that can make the effort by the 29th.

2 MS. HO: Yes, Your Honor. I will do  
3 that.

4 SPECIAL MASTER POPPITI: Okay. And then  
5 we will write the dates more firmly into some stone on  
6 Wednesday. Okay?

7 Will somebody, please, agenda that for  
8 me on Wednesday at the end of Markman.

9 MR. CHRISTENSON: Yes, sir.

10 SPECIAL MASTER POPPITI: Okay.

11 MR. CHRISTENSON: That was the last  
12 issue we had in our May 8th submission, Your Honor.

13 SPECIAL MASTER POPPITI: Good.

14 Let me ask what everyone's druthers are.  
15 There is one more matter, and I expect that it could take  
16 some time to get through. Let me just outline what it is  
17 and let's see what we all come up with. It's the May 2nd  
18 application from ViewSonic. It's a letter from Jim  
19 Heisman, and the response to it is May 8th -- I'm sorry,  
20 that's not correct, May 2nd. May 8th is another piece of  
21 correspondence from Mr. Heisman -- and then May the 9th  
22 from Mr. Kirk. I'm not sure we should be diving into  
23 that now because I think it will take us a while.

24 MR. CONNOR: Your Honor, this is Cormac

Teleconference

Page 99

1 Connor. I will be arguing on behalf of LPL for those  
2 submissions and just as part of this timing  
3 consideration, I do need to point out that I have to pick  
4 my daughter up from day care and leave here no later than  
5 5:45.

6 SPECIAL MASTER POPPITI: Well, let me  
7 ask this, then, does it make any sense to -- what time  
8 are we starting Markman? I don't have my calendar here.

9 MS. HO: One o'clock, Your Honor.

10 SPECIAL MASTER POPPITI: And how long do  
11 we expect we are going to be?

12 MR. MILLER: Your Honor, this is Scott  
13 Miller. I think we had originally estimated three hours  
14 as to what your schedule was.

15 SPECIAL MASTER POPPITI: Yes. I think  
16 we did, too.

17 I am just not inclined to -- I don't  
18 think we are going to get through this between now and  
19 the time to shoot for is a quarter to 6, as I just heard.  
20 So I'm going to propose that we do this at another time.  
21 Now, whether we do it in conjunction with Markman, and  
22 that may not be very smart to do, or whether we do it  
23 several days after. We have got some other work ahead of  
24 us on other matters that are still open.

Teleconference

Page 100

1                   And I'm wondering whether this can wait  
2   for the expected December cleanup -- boy, I hope there  
3   are not too many of those things. What are your  
4   thoughts, please?

5                   MR. MILLER: Your Honor, I have no  
6   objection to moving it off of today.

7                   SPECIAL MASTER POPPITI: Okay.

8                   MR. MILLER: The only question is if  
9   Mr. Connor is going to be handling it, I don't know  
10   whether it's possible to do it on the 30th before the  
11   Markman Hearing.

12                  SPECIAL MASTER POPPITI: Okay.

13                  MR. MILLER: That morning sometime, and  
14   perhaps Mr. Nelson from my office could take the lead on  
15   it and you could do it by telephone, if I can't do it  
16   directly.

17                  SPECIAL MASTER POPPITI: Yes.

18                  MR. MILLER: Or we can do it sometime  
19   after Markman, whatever you prefer in terms of a  
20   schedule, or trying to shoe-horn it in this weekend. I  
21   am open to all three of those choices.

22                  MR. CONNOR: As for myself, Your Honor,  
23   I'm sure there is someone else that, if necessary,  
24   someone could step in, but May 30th is the date on which

Teleconference

Page 101

1 my wife will be having a C section to have our second  
2 child.

3 SPECIAL MASTER POPPITI:  
4 Congratulations.

5 MR. CONNOR: I am boxed in by child-care  
6 obligations here on these dates.

7 SPECIAL MASTER POPPITI: It's a nice box  
8 seat.

9 MR. CONNOR: Your Honor, I don't mind if  
10 you want to proceed a little and see where we can get or  
11 if you want to proceed tomorrow. But again, if the 30th  
12 is a date that works, that's just a difficult time for  
13 me.

14 SPECIAL MASTER POPPITI: All right.  
15 Well, just give me one moment. I'm going to put you on  
16 hold so I can check something with respect to tomorrow.

17 (Discussion off the record.)

18 SPECIAL MASTER POPPITI: Counsel, let me  
19 ask this question. I've got another hearing at 5 o'clock  
20 tomorrow in another matter. Any idea as to how long we  
21 can expect this application will take? What I'm trying  
22 to do is not expect that Ellie and her team are going to  
23 be running back and forth between hearings.

24 So if it's going to take an hour or an

Teleconference

Page 102

1 hour and a half, then we can start at 3:00 or 3:30, and  
2 that will still keep me clear for 5 o'clock.

3 MR. MILLER: Your Honor, this is Scott  
4 Miller.

5 I believe if we started at 3:00,  
6 certainly we would be clear.

7 SPECIAL MASTER POPPITI: Okay. Then  
8 let's do it tomorrow at 3:00. And then we can also do  
9 the other housekeeping matters that we need to do on  
10 December cleanup in terms of timing. If you will all  
11 discuss that between tomorrow and 3:00, offline, that may  
12 be helpful in terms of selecting some dates. And I  
13 wouldn't mind if you all have some sense as to what dates  
14 work for you during the course of the day tomorrow, if  
15 local counsel can be in touch with Mary, she will be able  
16 to figure out what dates are good for me.

17 Does that work?

18 MR. CHRISTENSON: Your Honor, this is  
19 Cass Christenson.

20 Your Honor, I think that works,  
21 Mr. Miller alluded to unspecified issues earlier, I'm not  
22 sure what those are; but I know we have identified two  
23 discrete issues that we wanted to get raised and  
24 resolved. If there are going to be additional issues

Teleconference

Page 103

1 from prior hearings to be addressed from ViewSonic's end,  
2 we would need specific time in advance to be informed  
3 about what those are.

4 SPECIAL MASTER POPPITI: Right. And  
5 that's what I want you to discuss so we can come up with  
6 some time frame as to when they should be, they should be  
7 either -- No. 1, when you can discuss them. And No. 2,  
8 if you can't reach resolution when you can re-tee them  
9 up. And I sincerely apologize for anything that fell  
10 through the cracks.

11 We will be on at 3 o'clock then to deal  
12 with the matter that I just identified.

13 MR. CHRISTENSON: Thank you, Your Honor.

14 SPECIAL MASTER POPPITI: Thank you all  
15 very much.

16 MR. KIRK: Thank you, Your Honor.

17 (The teleconference concluded at 5:15  
18 p.m.)

19

20

21

22

23

24



Teleconference

Page 104

1 C E R T I F I C A T E

2

3 STATE OF DELAWARE:

4 NEW CASTLE COUNTY:

5 I, Ellen Corbett Hannum, a Notary Public within and  
6 for the County and State aforesaid, do hereby certify  
7 that the foregoing teleconference was taken before me,  
8 pursuant to notice, at the time and place indicated; that  
9 the statements of participants were correctly recorded in  
10 machine shorthand by me and thereafter transcribed under  
11 my supervision with computer-aided transcription; that  
12 the transcript is a true record of the statements made by  
13 the participants; and that I am neither of counsel nor  
14 kin to any party in said action, nor interested in the  
15 outcome thereof.

16 WITNESS my hand and official seal this 25th day of  
17 May A.D. 2007.

18

*Ellen Corbett Hannum*

19

Ellen Corbett Hannum, RMR, CMRS  
Notary Public - Reporter  
Delaware Certified Shorthand Reporter  
Certification No. 118-RPR

20

21

22

23

24

